Public Utilities

FORTNIGHTLY

Volume XLVI No. 1 July 6, 1950

AN ANSWER TO THE INFLATION DILEMMA IN RATE MAKING
Part I.

By John W. Kushing and Grover C. Wirick, Jr.

« »

Leadership Development in Industry
By J. C. McKeon

« »

What Makes Industry Change Its Address?
By J. A. Whitlow

« »

Is the Demand Charge Justified?
By Alfred V. Roberts

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Public Utilities FORTNIGHTLY

VOLUME XLVI JULY 6, 1950 NUMBER 1

ARTICLES

FEATURE SECTIONS

PUBLIC UTILITIES REPORTS, INC., PUBLISHERS

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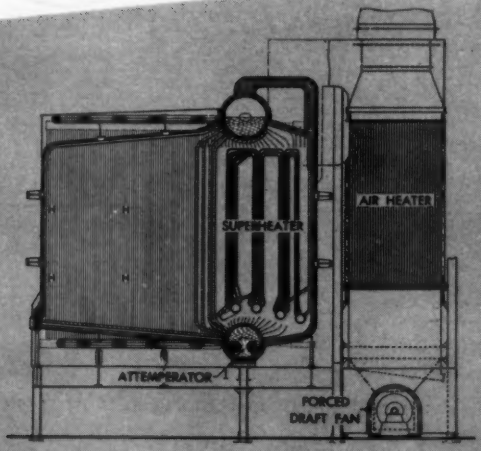

B&W Integral-Furnace Boiler, Type FH, with pressurized casing, now in successful operation in outdoor central station installation. Design capacity is 300,000 lb. of steam per hr. at 875 psi and 910 F with gas-firing.

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Demand charge for Induced-Draft fan capacity may run as high as one-half of one per cent of gross generating capacity . . . an appreciable expense to any central station. Maintenance, too, is excessive because of constant exposure to hot gases and entrained abrasive particles.

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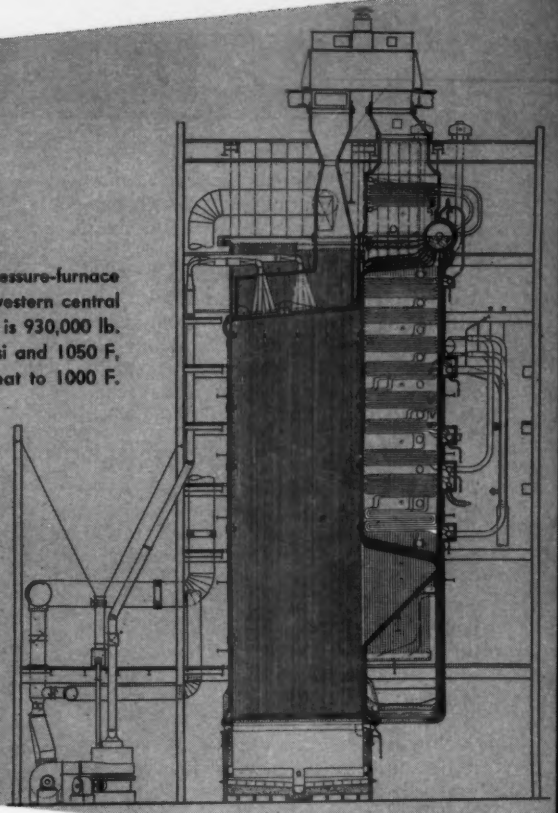

B &W Radiant Boiler of pressure-furnace design now serving in mid-western central station. Design capacity is 930,000 lb. of steam per hr. at 2300 psi and 1050 F, with reheat to 1000 F.

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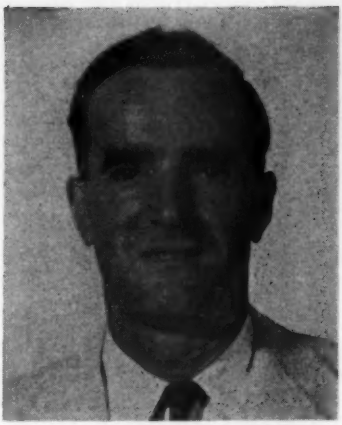
G-4

Pages with the Editors

READERS of contemporaneous nineteenth century novels—if such contemplative gentry still exist in these glamorous days of radio, television, and spoon-fed "digests" — must sometimes wonder about the decline and fall of the purchasing power of many once honored monetary units. The English penny, the French centime, the American cent all once had a humble but respected place in the world of commerce.

WHEN Dickens speaks of "a penny's worth of ale" and Balzac speaks of "a cup of coffee and rolls to be had for a couple of sous," in the Paris of the Restoration, modern-day readers must occasionally feel a touch of wonderment. Even in our own times the American penny once bought some kind of a cigar; and Horatio Alger's boyhood heroes managed to dine for a dime and gain weight in the process.

NOWADAYS, even the nickel has lost its traditional potency. This will be grasped very readily from a splendid Yardley cartoon, courtesy of *The* (Baltimore) *Sun*, entitled "The Vanishing Buffalo," which appears on page 35 of this issue. The nickel streetcar fare, the nickel cigar, the nickel beer, and the nickel cup of coffee have all gone to the Happy Hunting Ground. The latest casualty seems to be the nickel telephone call in several American cities. As for the American penny, its surviving usefulness seems to be trended toward making change for various sales taxes. The penny newspaper has long since disappeared.



ALFRED V. ROBERTS

JOHN W. KUSHING

OF course, we realize that this loss of purchasing power by the smaller monetary units has been more than offset by the tremendous gain in the volume of total purchasing power available. By any comparable standards, people have more money to spend, even at higher prices. But there is an important regulatory angle in this constant decline of specific monetary unit purchasing power over the decades. Utility plants constructed at original cost in terms of 1910 dollars or 1925 dollars still earn rewards in "rate of return" for investors keyed to the original investment. The resulting problem for the regulatory specialist is to adjust the return so as to continue to attract capital for utility plant investment—capital that might otherwise go to unregulated competitive industry.

IN this issue we present the first of a 2-part series on the problem posed by the inflation dilemma for utility rate making. It is a joint product of two regulatory specialists on the staff of the Michigan Public Service Commission.

JOHN W. KUSHING, one of these authors, is chief engineer and director of public utilities for the Michigan board. Born in Battle Creek and graduated from the University of Michigan (BSE, '21 and MSE, '25) he has specialized in construction research and economics, first in private manufacturing industry and later in public utility and highway construction. He joined the Michigan commission nine years ago. He is the past chairman of the state utility engineers group of the National Association of Railroad and Utilities Commissioners.

GROVER C. WIRICK, JR., the other collaborator, was born in Flint, Michigan, and graduated from Michigan State College (BA, '42) and the University of Michigan (MA, '46). His earlier experience was as a security analyst with a Detroit bank. He is now a statistician with the Michigan commission.

* * * *

LAST month thousands of eager young men and women left the halls of our colleges and universities with diplomas in hand ready to set the world right. This month, a good many of them are still sitting around wondering when the world of business and commerce will awaken to its opportunity.

J. A. WHITLOW

IT is easy to pass off this difficult transition period as one of life's minor tragedies. But in recent years there has been some serious thought in high places as to whether this embarrassing shift, between the academic and gainful occupation, is necessary. Industrial executives are beginning to wonder whether it really does not mean lost motion and poor management of a valuable asset; namely, youthful incentive.

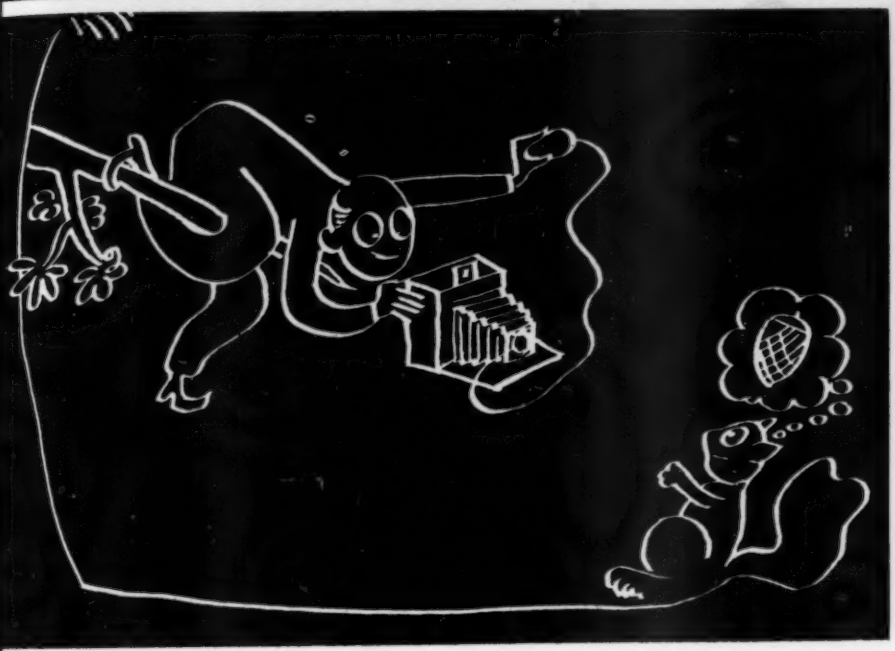
WE present in this issue a thoughtful discussion of an actual plan for cooperative campus training which one of our great utility manufacturing organizations has placed into operation. The author of this article (which begins on page 10) is J. C. MCKEON, manager of university relations, Westinghouse Electric Corporation. Before joining Westinghouse nine years ago, he was an associate professor at the University of Tulsa.

* * * *

ALFRED V. ROBERTS, whose article on the demand charge begins on page 25, has recently returned to the United States for professional practice after a tour of duty as engineer with the Hawaii Public Utilities Commission, which began in 1939. Born and educated in England, MR. ROBERTS served five years with Lloyds Bank, Ltd., before coming West in 1908. He took up civil engineering in 1918 and played a considerable part in the establishment of the Honolulu Water Works. He has performed other engineering, research, and administrative services for the territorial government. He is a member of the Engineering Association of Hawaii. He is now a resident in Portland, Oregon, of which state he is a citizen.

THE next number of this magazine will be out July 20th.

The Editors



Have you an up-to-date picture?

DO the facts in your hands now give you a clear, true picture of your consumers' age data . . .

. or are your statistics (pardon us) out of cus?

o get, and keep up-to-date pictures of usage ta, call regularly on the Recording and Statistical Corporation.

We can compile your data in ⅓ the time . . . d at ⅓ the usual cost of preparing it in your n offices.

0,000 of your bills can be analyzed in one y by the remarkable Bill Frequency Analyzer—an electro-mechanical device developed pecially for this purpose. Consequently, the st to you is but a small fraction of a cent r item.

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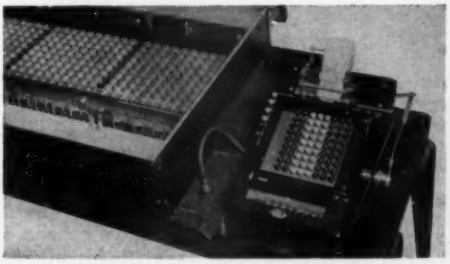
"The One Step Method of Bill Analysis" is an informative booklet that tells you more about this accurate and economical method of compiling consumers' usage data. We will gladly send it to you upon request.



This Bill Frequency Analyzer—developed especially for utility usage data—automatically classifies and adds in 300 registers in one step.

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Coming IN THE NEXT ISSUE

★

MORE LIGHT NEEDED ON ELECTRIC POWER

The recently elected president of the Edison Electric Institute, who is also president of the Carolina Power & Light Company, L. V. Sutton, gives us his personal views on the necessity for promoting an enlightened public opinion at the grass-roots level concerning the public service responsibility of America's electric power industry. He reviews the basis for the recent 15-point "Principles for Sound Water Resources Development" adopted by his association.

AN ANSWER TO THE INFLATION DILEMMA IN RATE MAKING. PART II.

What special problem does inflation pose to the regulatory commission? It is not so much the actual economic dislocation as it is the influence which inflation has upon certain regulatory procedures. Needless to say, state commissions share this apprehension during an era of inflation. John W. Kushing and Grover C. Wirick, Jr., of the Michigan Public Service Commission staff, show in the second instalment of their 2-part series some practical steps to coping with price rises in rate fixing.

PUBLIC UTILITY EXPANSION THROUGH PRIVATE ENTERPRISE

The so-called Cold War is not only an international major conflict being waged at the diplomatic level, it also vitally affects our private enterprise system on the domestic front. Robert R. Gros, publicity manager for the Pacific Gas and Electric Company, believes the Cold War actually has icicles all over American business. The threat to the utility industries is specifically explored.

A COLLEGE STUDENT LOOKS AT RURAL ELECTRIFICATION

How does the rural power policy of the Federal government appear to the average intelligent American still in college? Here is an objective and unaided study of the REA—with conclusions of the author, Clark M. Brink—submitted as a "term paper." It is presented as an interesting case study of what a fairly representative college man is thinking about along these lines, when thrown on his own resources and research.

★

Also . . . ***Special financial news, digests, and interpretations of court and commission decisions, general news happenings, reviews, Washington gossip, and other features of interest to public utility regulators, companies, executives, financial experts, employees, investors, and others.***

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ROBERT E. WILSON
Chairman of the board, Standard Oil Company of Indiana.

"I'm not ready to hand that fine word 'liberal' over to the Socialists or the nibblers, for 'liberal' comes from 'liber,' meaning 'free,' and theirs is not the way to freedom."

W. WALTER WILLIAMS
Chairman, board of trustees, Committee for Economic Development.

"Tax revision cannot be attained overnight, but we can make steady progress toward removing the obstacles to business investment which are currently imbedded in our tax system."

MAURICE J. TOBIN
Secretary of Labor.

"If all Americans could understand the great contributions unions have made on our international fronts, as well as on our national front, there would be greater support for organized labor."

EDWIN G. NOURSE
Economist and former chairman, Council of Economic Advisers.

"Moving sternly and realistically to a balanced budget would force some problems into a harder posture this year and might even give us a year or two of less active and less profitable business."

HARRY M. MILLER
President, National Association of Railroad and Utilities Commissioners.

"If we want effective regulations, then the intrastate utilities should be regulated at the local level, with coöperative Federal commissions performing the interstate regulatory function."

JAMES A. FARLEY
Former Postmaster General.

"The national Congress is a great body and I can count in its membership scores of warm personal friends and fine patriots, but I sincerely feel that there ought to be much more of a spirit of national security rather than of local urgency in its activities."

EDITORIAL STATEMENT
The Wall Street Journal.

"Every Federal officeholder and deputy do-gooder is in favor of simplifying the executive establishment and rendering it less expensive, so long as his own agency is not touched. If anyone suggests that his office might be eliminated it comes close to treason."

VANNEVAR BUSH
Wartime head, Office of Scientific Research and Development.

"A people bent on soft security, surrendering their birthright of individual self-reliance for favors, voting themselves into Eden from a supposedly inexhaustible public purse, supporting everyone by soaking a fast-disappearing rich . . . will not measure up to competition with a tough dictatorship."

OTTO SEYFERTH
President, Chamber of Commerce of the United States.

"Excessive demands upon the financial resources of our citizens, to support broadening undertakings of our government, especially moves in the direction of state paternalism, menace economic stability."

A. L. MILLER
U. S. Representative from Nebraska.

"... if we adopt the Brannan farm plan, socialized medicine, socialized housing, nationalized industry, and the Spence OPA Bill, we will have gone down the road to Socialism from which there is no return."

JOSEPH W. MARTIN
U. S. Representative from Massachusetts.

"Almost unbelievable is the way the Federal government is siphoning the wealth of the states into Washington. No state in the Union gets a full dollar back out of the money sent to Washington. The brokerage charge of the bureaucracy in handling the money is terrific."

EDWARD N. ALLEN
Former mayor, Hartford, Connecticut.

"Advertising has its place in business. It has its place, too, in politics. Public relations are very important and the people should at all times be kept informed about their own business, their own government. Beyond that, advertising has no place in government, certainly no place to keep the administration of either party in power at the expense of the people."

Excerpt from New England Letter.

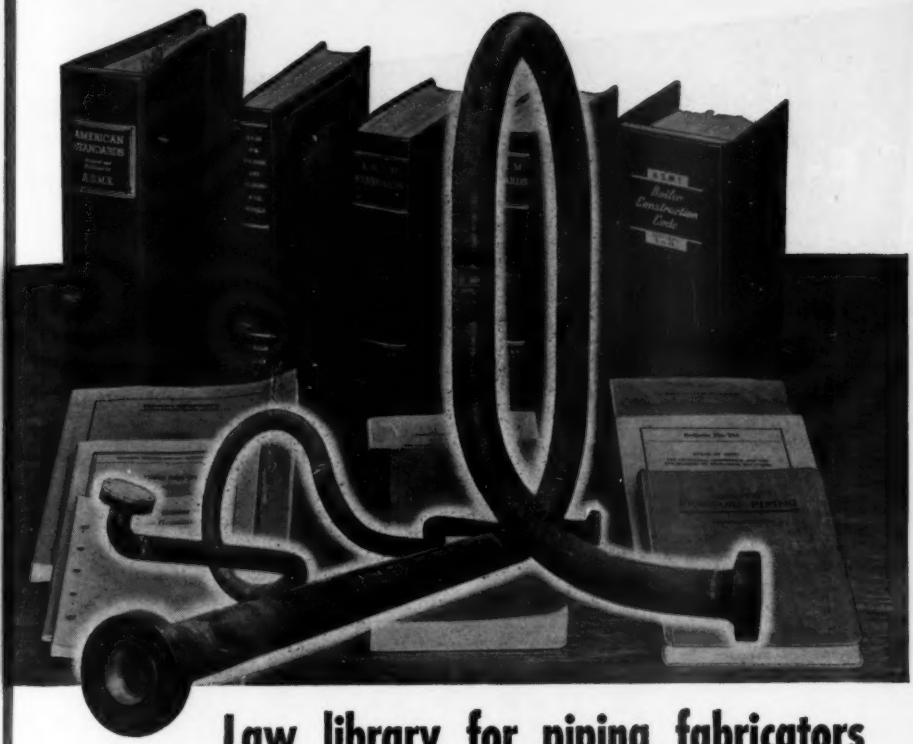
"The survival of private enterprise is dependent upon sound economic and fiscal policies. Among the essentials in this connection is the free use of money in both domestic and foreign trade. When this does not prevail, the flow of goods is blocked and the economy becomes 'rigid,' while governmental edict and planning replace individual judgment and the flexible features of the market place."

BENJAMIN F. FAIRLESS
President, United States Steel Corporation.

"We believe that there is one economic lesson which our twentieth century experience has demonstrated conclusively—that America can no more survive and grow without big business than it can survive and grow without small business. Every fact of our economic and industrial life proves that the two are interdependent. You cannot strengthen one by weakening the other; and you cannot add to the stature of a dwarf by cutting off the legs of a giant."

LEROY A. LINCOLN
President, Metropolitan Life Insurance Company.

"It seems to be pretty generally conceded, outside of some government circles, that both the buying and selling and the holding of stocks are inhibited by high individual income taxes, the capital gains tax, and the unsound provision for double taxation of dividends. Finally on this subject, cumulative evidence of desire on the part of the government to create new forms of governmental competition with private business would, of themselves, discourage investment in business equities."



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THE safety of your employees, the welfare of the community and a major investment can depend on a single piece of prefabricated piping. That's what piping codes are for . . . state, national, association and insurance codes. You don't have to know these codes because Grinnell engineers know the "law" intimately, check and cross-check with these codes at every step from preparation of detailed drawings and specifications right through bending, welding, stress relieving, heat treating, testing, final inspection, assembly and test runs.

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EE STATION

UKE POWER COMPANY

e C-E Unit illustrated here, one of two duplicates, is now under nstruction at the Lee Station of the Duke Power Company at zer, South Carolina.

ach of these units is designed to serve a 90,000/100,000 kw bine generator operating at an initial steam pressure of 1250 at 950 F, reheated to 950 F.

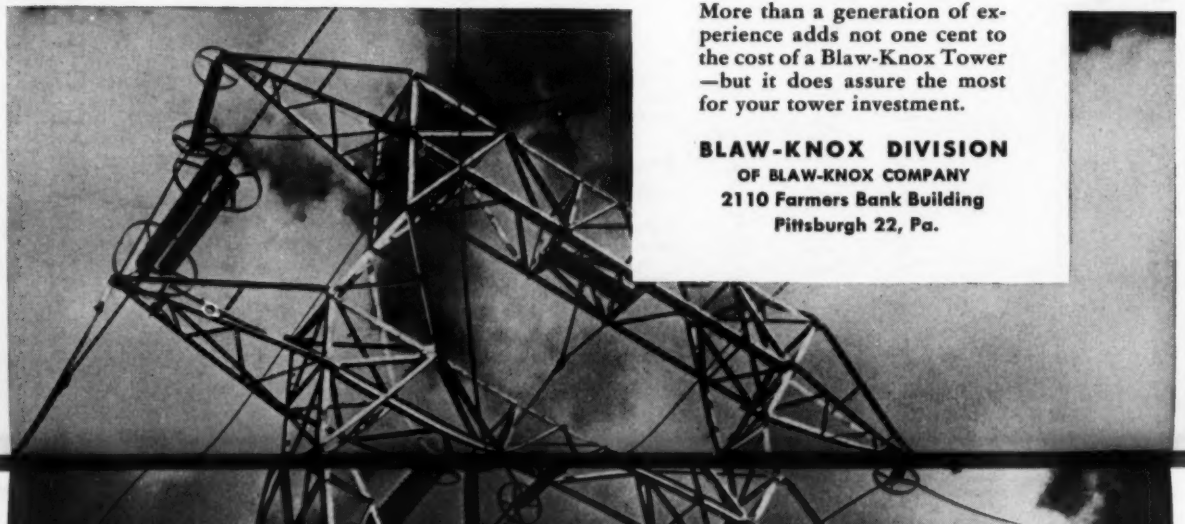
The units are of the radiant type with a reheater section located ween the primary and secondary superheater surface. A finned e economizer is located below the rear superheater section, regenerative air heaters follow the economizer surface.

The furnaces are fully water cooled, using closely spaced plain es throughout. They are of the basket-bottom type, discharging sluicing ash hoppers.

Pulverized coal firing is employed, using bowl mills and tilting, gential burners.

B-412A

ALL TYPES OF BOILERS, FURNACES, PULVERIZED FUEL SYSTEMS AND STOKERS; ALSO SUPERHEATERS, ECONOMIZERS AND AIR HEATERS



BLAW-KNOX TRANSMISSION **TOWERS**

Utilities Almanack

JULY

6	Th	¶ *Pacific Coast Gas Association will hold annual convention, Seattle, Wash., July 31–Aug. 3, 1950.*
7	F	¶ *American Federation of Radio Artists will hold convention, Chicago, Ill., Aug. 10–13, 1950.*
8	Sa	¶ *International Conference on Large Electric Systems ends, Paris, France, 1950.*
9	S	¶ *Illuminating Engineering Society National Technical Conference will be held, Pasadena, Cal., Aug. 21–25, 1950.*
10	M	¶ *World Power Conference begins, London, England, 1950.*
11	Tu	¶ *Western Association of Broadcasters and Canadian Association of Broadcasters will hold meeting, Jasper, Alberta, Canada, Aug. 30–Sept. 2, 1950.*
12	W	¶ *American Society of Civil Engineers begins annual convention, Toronto, Ontario, Canada, 1950.*
13	Th	¶ *New Jersey Gas Association will hold annual convention, Spring Lake, N. J., Sept. 8, 1950.*
14	F	¶ *National Petroleum Association will hold meeting, Atlantic City, N. J., Sept. 13–15, 1950.*
15	Sa	¶ *Michigan Independent Telephone Association will hold annual convention, Lansing, Mich., Sept. 14, 15, 1950.*
16	S	¶ *Controllers Institute of America will hold annual meeting, Chicago, Ill., Sept. 17–20, 1950.*
17	M	¶ *Rocky Mountain Telephone Association will hold annual convention, Salt Lake City, Utah, Sept. 21, 22, 1950.*
18	Tu	¶ *National Television and Electronics Exposition will be held, New York, N. Y., Sept. 23–30, 1950.*
19	W	¶ *American Trade Association Executives will hold annual meeting, Boston, Mass., Sept. 25–27, 1950.*

Fuel for the Lights of Broadway

Courtesy, Consolidated Edison Company of New York, Inc.

Public Utilities
FORTNIGHTLY

VOL. XLVI, No. 1 JULY 6, 1950

An Answer to the Inflation Dilemma in Rate Making

PART I

Concern is being felt in utility circles because of inflation. It is not so much the actual economic dislocation as it is the influence which inflation has upon certain regulatory procedures. This instalment deals with the return on equity capital.

BY JOHN W. KUSHING AND GROVER C. WIRICK, JR.*

To the public utility executive seeking new funds for plant expansion and to the public utility administrative agency seeking to balance consumer and investor interest, one of the most disturbing factors is that of inflation with its concomitant decline in the purchasing power of the dollar and its effect upon public utility financing.

The perturbation caused by inflation is not so much the actual economic dislocation occasioned by it as it is the influence it projects upon certain regulatory procedures in the determination of earning requirements.

Conflicting Principles of Regulation

HISTORICALLY, the administrative control of earnings and prices of public utilities has sought in general to avoid the subjective approach—an approach based on weighing the merits of individual cases. The attempts to

*For personal note, see "Pages with the Editors."

adopt objective standards have led to the development of formulae types of approach, leading to end results which have been severely criticized. They are criticized in part because they tend to evolve answers which eliminate the exercise of judgment or discretion by the members of the commission. Also, they are criticized because such methods do not give proper consideration to the investors who have supplied the capital funds. The disparity of justice in the end result between consumer and investor is especially amplified during periods of inflation. A similar condition will exist during a period of deflation.

The purposes of a regulatory agency endeavoring to meet its legal responsibilities are best carried out with policies which are democratically and justly determined. Without going into the procedural details of administrative adjudication, let us assume that the use of such policies requires a determinative action based on objective standards.

Such action may be one of discretion or judgment, ranging from the selection of one of many alternatives based on a somewhat vague standard of reasonableness, to an impersonal, unprejudiced choice based on an estimate involving economic conclusions obtained by the application of scientific methods. In the field of rate making, emphasis on the latter will develop policies reflecting greater consideration of the required *earnings* as distinguished from the so-called "rate base" or "rate of return."

THE late John E. Benton, in a paper delivered before the National Association of Railroad and Utilities Commissioners' convention of 1945, entitled "What Is the Measure of the Rate Base? What Is the Measure of a Fair Return Thereon?" concluded: "Whatever the measure of 'fair value,' according to the conception of different people, the thing itself is the amount multiplied by the fair rate of return to obtain the amount which the owner of the property being regulated is considered entitled to demand . . .

"Inasmuch as it is the amount of revenue a company will receive under rates prescribed by a commission, and not the process whereby the rates were made, which will be determinative with the court, the truth of my observation, that 'rate base' and 'fair rate of return' are irrevocably tied together, appears plain. Because the end result—the amount of revenue the rates will produce, and the sufficiency of such revenue from the point of view of the investors—is what counts, it is necessary that the rate base and rate of return be determined in conjunction, in order that the commission may determine the justice of the result."

FURTHER, Solicitor General Benton, in giving consideration to the effect of inflation in the determination of these factors and their relation to the "just compensation" or earnings requirements, states in part: "Whatever way might be taken, plainly adjustment in some way would be inevitable. This would be required not only in justice to investors but obedience to economic law. Investors simply will not buy securities if they find that progressive inflation operates to destroy progressively their right to receive just and reasonable compensation for the service rendered."

WHILE the history of utility regulation indicates emphasis on an objective standard of control of earnings, it is apparent that the process of regulation necessarily involves the exercise of quasi judicial judgment. Furthermore, the courts have repeatedly refused to be bound by final acceptance of any formula. In short, the determination of just and reasonable earnings should be based on judgment mixed with law. Such judgments based on economic facts, however, can be objective only in so far as they do not conflict with judicial interpretations.

All the court and commission decisions ever since Smyth *v.* Ames (1898), as well as those subsequent to the Hope decision (1944),[1] show us that "just compensation" has been based on confusing standards involving varying combinations of original cost and reproduction cost valuations. If, as the result of the Hope decision, commissions are free to adopt more objective standards, it still cannot be said that commissions are free from close judicial review. The court retains its judicial capacity to see to it that such standards do not lead to oppressive regulation.

Therefore, in an attempt to treat the problem objectively and, at the same time, to determine reasonable results, methods which test the *equity* or "justifiableness" of results can be more productive than an insistence on formulistic procedures—even where the latter are claimed to be objective and scientific in character.

[1] 320 US 591, 51 PUR NS 193.

Principles of a Test Procedure

LET us start with the criterion stated in the Hope decision—"Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed certainly cannot be condemned as invalid, even though they might produce only a meager return on the so-called 'fair value' rate base." This can help us in developing and selecting tests for reasonable earnings requirements. Other factors may be used as a test against the result obtained. A judgment obtained by balancing earnings requirement against our test may be only one constituent of a combination which tips the scales in the making of a scientific or quasi scientific decision.

For example, the adoption of a "rate base" premised on either original cost, reproduction cost, or current value, etc., accompanied by a "rate of return" premised on present cost of money, or a standard rate, gives us the basis for a figure which can be determined as the "earnings requirements." But if it is found that such earnings do not "maintain financial integrity, attract capital, and compensate for the risks assumed," then the court must find that such a return is confiscatory.

Now, we know that, objectively, the earnings requirement can be deter-

¶ "THE *perturbation caused by inflation is not so much the actual economic dislocation occasioned by it as it is the influence it projects upon certain regulatory procedures in the determination of earning requirements.*"

mined by considering the interest charges on debt capital, the preferred dividend obligations, a "proper" allowance for return on common stock, plus a certain amount for flotation costs. The "proper" allowance for a return on common stock we can figure out from dividend and earnings ratios to the price of stock in comparable ventures. We can compute the rate of return from the weighted averages related to the debt and equity proportions of the capital structure.

THE total of debt and equity investments, plus surplus, may be termed an "investment" rate base. When multiplied by the determined rate, we arrive at the given earnings requirement. Such a base may be usefully employed in the analysis of utility return and development of a regulatory policy. A method for its use we will consider later.

The investment base is most easily obtained from the books of account if these have been correctly kept. Either side of the balance sheet can be used. A proper determination of the investment base may require:

(1) An audit of the accounts to determine historical cost of fixed properties.

(2) An engineering appraisal of existing items in order to check accounting records and other engineering estimates for proper investment costs.

(3) A financial history of the business to reconcile both the audit and the appraisal with certain expenditures. These are expenditures which may be questioned as to prudency or for which equitable allowances have to be made for acquisitions or losses.

(4) Examination of sources of investment funds to determine: (a) par value of bonds, (b) amounts actually paid for subscribed stock, (c) proper amount to be included in reserves and surplus account, and (d) par value of notes and other evidences of indebtedness. The sum of these represents the economic capitalization in terms of the liabilities. Under proper conditions there will be little difference between measurement taken from either the assets or liabilities. The investment base and original cost are essentially similar. Historical cost and prudent investment are closely related.

(5) Exclusion of capital funds not used in current utility operations.

SO much for preliminaries. Next, how can this information be used for rate making during an inflation?

The adoption of any particular type of rate base, including original cost, reproduction cost, or investment, will not, in the opinion of the writers, lead us to such a determination of "required earnings," during periods of inflation as can be guaranteed to do equity to both consumer and investor. Objections to original cost and investment rate bases spring from the fact that they do not provide for adjustments to current conditions for return anticipated at the time of original investment. Of course this objection does not apply to fixed return securities, such as interest on bonds. The investors in such securities are not usually bound under any type of rate base. The satisfaction of their claims naturally comes ahead of the stockholders'. In times of severe inflation an earnings requirement (computed on an original cost basis and a fixed or "current" rate of

Return on Equity Capital

"EQUITY capital invested in a regulated industry differs from that invested in an unregulated industry in that the extremes of fluctuation of earnings are avoidable. Public utilities are territorially monopolistic businesses. In the absence of regulation the utility company would have considerable control over the prices charged and the quantity of service sold. This is in contrast with a competitive industry in which each company must accept the market price set by commercial rivalry, and the quantity sold depends on marginal cost considerations."

return) will generally call for a return less than that expected at the time of investment. This discrepancy is increased if the difference in the purchasing power of the dollar between the two periods is considered.

Application of the same rate of return (as used above) to a reproduction value can produce a result considerably in *excess* of that equitably required. The common stockholder gets the extra advantage of a higher proportion of earnings in excess of the "fixed return" or contract requirements—this in addition to the earnings already adjusted by changes in price trends. Only under special conditions would such a result be equitable. Furthermore, there does not appear to be any method which can properly determine a correction.

THE law of a particular state is a further consideration. When the local statute requires that the rates shall be based upon (1) a reasonable return on (2) "fair value," it is apparent that two variables are introduced for consideration. Attempts may be made to determine each independently. But anyone familiar with administrative decisions knows that certain preconceived practice inevitably influences the finally fixed values of each factor. Reasons why such procedure is necessary are obvious.

In some cases where administrative agencies are not so limited in their approach, an original cost base, multiplied by some rate of return related to cost of money, yields an earnings requirement which may or may not be found to be reasonable. If the policy

of the agency is based on the philosophy that all the investor is entitled to is the "going rate," applied to the actual investment, then, of course, such a product will be considered reasonable. But if the commission follows a policy which gives consideration to the *present* stockholder, with respect to the change in dollar return related to general price level changes, then we have to do something about the rate of return on an original cost basis so as to reflect the current cost of money.

It is the authors' approach to the dilemma to allow *any* rate base return method, for computation and required earnings, and then test such product by special method. This method is based upon the criteria already mentioned. They mainly deal with the cost of various classes of capital and give special attention to the common stock as influenced by changes in price levels.

Economic Considerations

LET us now consider the fundamental factors for working out our proper earnings requirement. We can start off with the general proposition that the proper measure of a fair rate is the over-all cost of supplying the service, including operating costs, depreciation charges (sufficient to amortize asset costs over their useful lives), and capital charges sufficient to pay interest and a return which will maintain the credit of the company and enable it to attract additional needed capital on an equitable basis. Let us assume that an efficient management is keeping operating expenses at a minimum consistent with good service, and that depreciation charges are properly determined. Fixed capital charges (debt interest and preferred dividends) may also be assumed to be based on reasonable terms and to represent contractual obligations of the company. This leaves the return necessary on the equity portion of the investment upon which to concentrate our attention.

There are two complications at the outset. The first is that as general economic conditions change, the return necessary to attract equity capital fluctuates. Other things being equal, it is therefore reasonable that required earnings should be higher at one time than at another. The other is that the purchasing power of the dollar, as measured by prices of things it will buy, is not constant. This is especially important during a period of rapidly increasing prices, as well as during a deflationary period.

IF we were not disturbed by either of these imponderables the rate-making problem would be a relatively simple task. We need only the amount of risk existing in any utility business, such as the possibility of population change, local economic trends, or substitute services. These risks could be estimated quite accurately through actuarial methods. But how can we solve the problems presented by our two variants: the attraction of equity capital and the purchasing power of the dollar?

Return on Equity Capital

EQUITY capital invested in a regulated industry differs from that invested in an unregulated industry in that the extremes of fluctuation of earnings are avoidable. Public utilities are territorially monopolistic businesses. In the absence of regulation the utility company would have consider-

able control over the prices charged and the quantity of service sold. This is in contrast with a competitive industry in which each company must accept the market price set by commercial rivalry, and the quantity sold depends on marginal cost considerations.

The fact that utilities are monopolies, in this sense, means in general that the regulated price is lower than that which the company could and would charge if it were a free agent. This is a vital point. It means that the utility investor is sacrificing the opportunity to receive very high profits on his investment as compared with an investor in a competitive company who would expect his management to exploit every profit opportunity to the limit. The utility investor, in return, receives a consideration for this sacrifice which he makes in the public interest (*i.e.*, of the widest distribution of these essential services at the lowest prices consistent with covering costs). This consideration is that he will be allowed, during periods when earnings are at a low ebb, due to economic conditions, to charge prices which will prevent his earnings from falling far below the average.

THIS, again, is in contrast with an investor in competitive business who must accept the famine as well as the feast. This opportunity is worth the price, inasmuch as the monopoly position means that there is a leeway above the regulated price which can be tapped to level out the earnings when necessary. In other words, the utility investor has an agreement with society that he will forego an opportunity for exceptional gain in return for a promise to be protected from the risk of exceptional loss.

The importance of this implied promise lies in the fact that the investor is presumed to be aware *at the time he buys stock in a utility!* Being aware of the implied bargain, it can be assumed from a regulatory standpoint that the stock buyer accepts the relationship with society which must be inferred.

Of course, there is no *guaranty* of a particular return implied. No commission could legally make such a guaranty. It can only grant permission to take advantage of the leeway—something like the state issuing a hunting license. Note, however, the higher yield realized on utility common stocks than on utility bonds or preferred stocks, each of which do carry different degrees of guaranty.

THE effect of this concept is that the stockholder is entitled to the opportunity to earn on his investment a rate that represents the "going rate," at the time the investment was made. It might be added that while the investor is entitled to this opportunity, he realizes that the higher rate typical on common stocks also reflects the possibility that he may not realize the anticipated return, and that he may, in fact, suffer a loss in his original investment if the company is not successful.

PART II *of this article will appear in the next issue of the* FORTNIGHTLY.

Leadership Development in Industry

Last month thousands of college graduates joined the business world. There are many ways that industry can promote teamwork with colleges. Realizing that industrial leaders of the future will be drawn from the ranks of professionally trained men, some of our business organizations are developing definite programs in collaboration with colleges.

By J. C. McKEON*

PUBLIC utility and other industrial leaders of the future will be drawn from the ranks of professionally trained men. The type of leadership we can expect will depend upon the quality of the preparation young men are receiving in the colleges and in industry today. To meet the needs of the individual in a complex industrial society, the professional colleges of engineering and business administration are placing greater emphasis on the teaching of fundamentals.

By fundamentals, I mean basic principles and their application, rather than specific techniques. If the college graduate is to continue to grow and assume his full responsibility in his company and in his community, management must pick up the educational processes where the colleges leave off. It is industry's responsibility to provide industrial "know how" and specialization through effective training and personnel development. The education and training of a professional man is, therefore, a joint responsibility of industry and the colleges.

Bridging the Gap

THE need for education and training in industry becomes apparent when one realizes the gap which exists between the college senior and the full-fledged engineer, accountant, salesman, or supervisor. Perhaps the most critical period of the young graduate's whole career is his first five years after graduation. On his first job in industry, he finds himself in a complex industrial setup with a relatively high

*For personal note, see "Pages with the Editors."

division of labor, well-defined lines of authority, and established behavior patterns. It is during this period that he is finding his place in the organization, attempting to understand himself, and shaping his professional goals. In many cases, he is establishing his family and certainly his income is modest.

Frequently, the recent graduate feels that he is neither using his abilities at the highest level, nor working on a job that is leading anywhere; certainly not the position of prestige which he had visualized. Bridging the gap between assignments on the campus and the responsibilities of a career in industry is not an easy task. Obviously, he needs guidance and training if he is to make the transition from the supervised development of the college to self-initiated development.

BUT why should industry be so concerned about the young professional employee? Why not let him knock around during his first few years after graduation until he finds himself? True, the primary obligation of industrial management is to run the business so it will succeed. A business must be productive and profitable if it is to continue to produce goods and services and provide jobs. But productivity is as much a problem of training competent people as it is a technical problem. Enlightened management recognizes that it must look to the young men for future leadership.

Utility executives, as well as other industrial leaders, will agree readily with me that the greatest asset of their business is its professional personnel. Therefore, the problem is, how to develop the type of men so urgently needed in the shops, field, laboratories, and front offices. This is not an academic question. It involves very real problems of personnel and productivity which confront the top management of every company.

Essential Qualities

BEFORE undertaking a discussion of the requisites of an effective development program, it will be helpful to point up some of the requirements for success in industry. Industry needs men who understand the fundamentals of their chosen field, whether it be accounting, engineering, or law. The better a person knows the technical aspects of his job, the greater his self-confidence and security. But technical competence is not enough. Today, industry, especially the public utility business, needs men who have the capacity to deal with *people!* Dealing with people means much more than just getting along with them. It means getting the job done, but doing it in such a way that harmonious relations exist throughout the organization. In modern industry, no one works alone. Results are accomplished through the efforts of people—people working as a team.

To develop and apply the social and technical skills in industry, a person must have certain personal qualities. Specifically, what are the personal attributes essential to success in every field? This is a philosophical question, so we must be careful not to give it a philosophical answer. It is commonly agreed that one must be honest, loyal, and hard working to succeed. These are primary requisites. But most people are honest, loyal, and do work hard. So these qualities do not neces-

sarily differentiate between those who are successful in attaining professional competence and those who never get beyond the fringes of engineering and business.

SINCE these qualities are obviously essential, let us discuss those attributes which are less obvious. There are five, which I think are especially significant and which I should like to point up for further discussion.

1. *Ability to Create Challenges within One's Self.* Successful men have the ability to devise immediate and long-term objectives which impel them toward achievement. Call it drive, motivation, or desire to move forward. One's success depends, in a large measure, on the goals he sets and his ability to work toward them.

2. *Response to Adversity.* A professional career is not all smooth sailing. Sometimes, the best plans go wrong. How the individual responds to adverse conditions has a bearing on his future. A sound basic philosophy of life acts as a stabilizer when the going gets rough. The young professional man needs to realize that there are not any short cuts to success in life, and that the way which seems to lead to wealth and fame often proves to be a dead-end street.

3. *Adaptability.* To progress, one must adjust himself to changing conditions. In part, adaptability is a result of a good fundamental education and broad experience. More than this, it is mental flexibility. It is the attitudes by which one will react positively toward assuming responsibility, learning a new skill or specialty, moving to a new position or place, and taking a calculated chance.

4. *Effective Expression.* Even the best ideas have to be sold. The ability to express one's self through both the written and the spoken word is an attribute of major importance. Getting good ideas is only half of the battle. The professional man must use the language convincingly in conversation and in prepared talks, or through letters, articles, and reports.

5. *Desire for Self-improvement.* Everyone likes to feel important. It's a very human trait. Many a recent college graduate would like to be president of a company, a renowned scientist, or a sales manager. But how many are willing to make the investment of time and effort to prepare themselves for such responsibilities? The ability to plan and follow a self-development program assures a higher job ceiling.

A Development Program[1]

THE managements of the operating utility and manufacturing seg-

[1] "Developing Professional Competence in Industry," J. C. McKeon, *Mechanical Engineering*, Volume 72, June, 1950.

¶ "IF *the college graduate is to continue to grow and assume his full responsibility in his company and in his community, management must pick up the educational processes where the colleges leave off. It is industry's responsibility to provide industrial 'know how' and specialization through effective training and personnel development.*"

ments of the electrical industry are alert to their future man-power requirements and constantly review methods of developing technical and management leadership for the future. They ask themselves these questions:

What jobs will we have to fill each year for the next five to ten years because of retirements, general turnover, and expansion to meet increased customer demand?

Are we selecting and grooming competent men to take over these responsibilities?

Are we bringing in an adequate supply of new blood from the colleges each year so as to have the right age distribution? Are we recruiting high-potential men, the type of men who will be needed ten, fifteen, twenty years from now to fill key positions? Are these young men keeping abreast of new developments, and growing with the company through training, education, and the encouragement of management, or is their individual growth curve leveling off for lack of incentives?

A careful analysis of future personnel requirements and training methods will reveal a need for a stronger development program in almost every company. To provide the type of men needed in the electrical industry requires a broad-gauge program. Here are six points which the writer believes to be essential to an effective development program.

1. Selection and Recruitment

THE first requisite in building an organization for the long pull is the recruitment of capable people. It is not only important that a company have a flow of new blood into the organization, but it must be the right type. Careful screening of candidates is essential since a college degree is not, in itself, evidence of fitness for a particular company. Errors in selection not only result in the employment of misfits who prove costly in terms of turnover and employee dissatisfaction, but deprive the company of good men who will be needed. Men recruited at the colleges for jobs on the first rung of the professional ladder should be selected for their potential rather than their ability to become immediately productive.

II. Initial Training

A WELL-organized training program not only helps the young engineer make the transition from the college campus to a productive job in industry, but it gives him the specific knowledge he needs to move forward. Through a brief period of orientation, he receives proper introduction to the company, its people, products, and policies. A series of coördinated work assignments and conferences provide firsthand knowledge concerning the company's operations, the avenues of opportunity open to him, and the type of work for which he is best fitted. Periodic counseling during the training period gives assurance that the program is serving the needs of the individual and the company. Normally, the initial training period extends over a period of about a year.

III. Follow-up Training

BUT initial training is not enough. There is need for continuous training on an informal basis as the young man moves along in his career.

Industry's Need for Qualified Assistance

"INDUSTRY *needs men who understand the fundamentals of their chosen field, whether it be accounting, engineering, or law. The better a person knows the technical aspects of his job, the greater his self-confidence and security. But technical competence is not enough. Today, industry, especially the public utility business, needs men who have the capacity to deal with* PEOPLE! *Dealing with people means much more than just getting along with them. It means getting the job done, but doing it in such a way that harmonious relations exist throughout the organization.*"

In the earlier phases, it is important that he be placed with an experienced employee who has a healthful outlook toward the profession and an understanding of the problems confronting the young engineer. He should have the qualities of a good teacher. A sympathetic approach will do much to bring out the young man's good qualities and strengthen his shortcomings.

As the young engineer gets a "feel" of the work, he should be encouraged to assume responsibility as fast as he can handle it. Job satisfaction is the key to good work, and satisfaction depends, in a large part, on the extent to which the job draws on all the employee's talents. Flexibility in arranging jobs makes possible the use of the individual's abilities at the highest level.

Job rotation broadens his knowledge and prepares him for advancement.

IV. Education

CONTINUED education is an integral part of an effective development plan. Encourage the young engineer to plan his own self-improvement program. It will keep him mentally alert, broaden his background, and provide a foundation for future assignments. Moreover, his educational pursuits give him a sense of personal accomplishment. Encourage him to develop his plan early in his industrial career, for experience has demonstrated that unless he formulates such a plan soon after he leaves college, he is not likely ever to do so. The plan would include informal as well as formal education to extend his technical knowledge and to fill in deficiencies of his undergraduate work.

Management can do more than encourage the employee; it can provide opportunity by working with the local colleges in offering evening courses

or arrange company classes. Three educational areas may be considered:

Engineering graduate study — in fundamentals leading to advanced degrees to develop the technical competence of those going into engineering and scientific fields of work.

Business education—in economics, accounting, statistics, finance, and marketing is of value to all industry people, especially those in sales and the business aspects of the company.

General education — in such fields as human relations, psychology, history, and speech for personal development.

In recent years, a number of companies have arranged extensive educational programs on both the graduate and the undergraduate levels, and the number is increasing. These programs, sponsored jointly by certain universities and companies, are making a real contribution. In areas where this form of education has been tried, the programs have the enthusiastic support of faculty, management, and employees.

V. Professional Activities

PARTICIPATION in the professional societies and civic organizations does much to develop the well-rounded individual we want. Contacts with people with different backgrounds and interests broaden his point of view and bring new ideas into the company.

No one company has a corner on all the best methods. Active participation engenders a sense of belonging and promotes professional consciousness. Committee activities promote true teamwork, rather than a mere follow-the-leader attitude. The preparation and presentation of papers builds self-confidence and gives the professional employee recognition in his company and community.

VI. Executive Development

AN executive talent search and development program is essential. Under our plan, we do not have to start from scratch in developing executive leadership. The programs outlined in the foregoing paragraphs provide a foundation and bring potential leaders to the attention of top management. Our point VI, therefore, concerns itself with grooming these men on the lower supervisory levels for positions of larger responsibility.

Development at this level is, by necessity, individualized. An engineer normally becomes a specialist. To manage effectively on the higher levels, he must be a "generalist." Through horizontal promotion, special assignments, and advanced training, broad-gauge executives are developed. Decentralization of operations and the "divisional type" of organization, common in large companies, contribute to the development of competent executives.

Our plan is a flexible one. It is adaptable to companies large or small. I have attempted to prepare a basic design only. The details of the individual programs and the way of operating them must be tailored to fit the needs of the particular company. In large organizations, the plan would be coördinated by the training department or a personnel development group. In the smaller companies, all that is needed is top management's support, and a man who is interested in devoting part of his time to such an activity.

REAL progress is being made in all six areas discussed. A number of companies have excellent over-all development programs. Other companies do a good job in certain training and educational areas. Engineering societies and professional groups are especially active. One of the most outstanding projects on professional development is that of the Committee on Professional Training of the Engineers' Council for Professional Development under the direction of A. C. Montieth, vice president of the Westinghouse Electric Corporation. The constructive program which the committee is developing should bring about the coöperative action of the employer, the college, and the technical societies in the professional development of the young engineer. Although it was designed, primarily, for engineers, it is applicable to graduates in other fields. It deserves our wholehearted support.

Industry-college Relations [2]

EARLIER in this discussion, it was suggested that the development of a professional man is a joint responsibility of industry and the colleges. The basis for industry-college coöperation is mutual understanding. In instances where the representatives of the colleges and industry sit down at a conference table and discuss their problems, we find real coöperative effort. Through such discussions, each side gains an insight to the problems of the other, and a realization of their joint and separate responsibilities. If the colleges are to continue to turn out competent men, they must have the active support of industry. By the same token, the colleges' responsibility for education cannot end when the student leaves the campus for his first job in industry.

There are many ways in which industry can promote teamwork with the colleges. They include summer industrial experience for professors, arranging joint industry-college seminars at industrial plants, joint graduate study programs, providing top-flight engineers and scientists as evening graduate school lecturers, selling laboratory equipment at attractive discounts, preparing engineering problems and material for the classroom, and sponsoring scholarships. Another way in which we can further build good relations between the electrical industry and the colleges is for each company to have several executives available for talks before student groups on the college campuses. The colleges welcome such talks by industrial leaders and we should avail ourselves of the opportunity to bring our story to the students personally.

Management Attitudes

WE come now to the keys to the success of a personnel development plan in industry. They will be found in the attitudes and the point of view of management. The best designed program will be ineffective without top management's support. Moreover, the results obtained will depend on the motives. If management thinks of the plan only in terms of the returns to the company, it will not have the support of the employees. Certainly, a patronizing attitude will not bring the desired results.

[2] "Basic Considerations in Developing Engineers," J. C. McKeon, *Chemical Engineering Progress*, Volume 46, June, 1950.

Realistically, the plan is best based on a philosophy that the results will accrue to the benefit of both the individual and the company. The responsibility for carrying out a personal improvement plan rests squarely on the individual's shoulders. Management's responsibility is to provide opportunity, to encourage self-development, and to give recognition for demonstrated ability. Such a philosophy provides a favorable climate for growth. An investment in a program of training and continued education will bring handsome returns to both the company and the individual.

Industrial Statesmanship

"WHAT is industrial statesmanship? It is a supervisor, foreman, executive, administrator who:

"1. Manages his organization with skill and at a profit while maintaining a high degree of morale and satisfying those served.

"2. Delegates responsibility and authority to lower echelons of management so as to develop executive caliber and stature.

"3. Works in a way that creates understanding and coöperation rather than friction.

"4. Understands our economic and social system, its motivations, its vitality, its historical development, its comparative benefits over other systems.

"5. Carries a deep conviction that ours is the system that affirms the individual, that capitalizes on incentive, that thrives on individual character and productiveness.

"6. Knows why and how our system can and must give the greatest job-satisfaction, be an outlet for the great human desire to create something—to be useful.

"7. By a definite program of action, works ceaselessly to get everyone within his realm of influence to understand and believe the same truths.

"8. Provides for individual attention to the problems and development of people on his payroll.

"9. Recognizes responsibility for the effect of his decisions and practices upon individuals and the community.

"Such an industrial statesman will be making a substantial contribution to maintaining our economy and our society. Such statesmanship is required to win the cold war of ideologies. Such statesmanship is steadily increasing in the American scene."

—LAWRENCE A. APPLEY,
President, American Management Association.

What Makes Industry Change Its Address?

Industry in general does not move from one part of the country to another to reap the benefits offered by all of us taxpayers in the form of cheap and partially subsidized government power—that is, unless other advantages are offered as an inducement.

By J. A. WHITLOW*

CHEAP government hydroelectric power does not magically bestow the surroundings with industry, wealth, and increased population. Yet, there is widespread propaganda in this country which repetitiously mesmerizes the people into a belief that industry locates wherever cheap government power is found. Such propaganda is often released by advocates of government spending, in the hope of justifying huge, subsidized projects either in operation or contemplated.

Location of Industry Results From Several Things

WHAT is necessary in locating the average industry and what is the order of importance?

1. There must be a market for the products: The product must be needed and wanted.
2. The second requirement is raw material from which to make the product.
3. The third requirement is an adequate supply of suitable labor.
4. Fourth, there must be good transportation facilities from the place of manufacture to the market.
5. Reasonable tax laws comprise the fifth requirement.
6. The sixth requirement is that living costs for employees be reasonable. If living costs are high then wages must be high and therefore the cost of the manufactured product would be increased unduly.
7. Seventh in the order of importance comes an adequate and dependable supply of power.
8. The eighth, and almost last in importance, is the price of electric power be reasonable.

THE small weight of the eighth requirement is borne out by the result of the 1947 United States Bureau of Census report on manufacturing costs. Based on a list of 109 selected manufacturing industries, the various cost items involved in $100 of manufactured goods are as follows:

* Former utility official, now resident in Tulsa, Oklahoma.

Materials and Supplies	$ 48.84
Wages and Salaries	24.12
Taxes, Overhead, and Profit	22.07
Fuels	1.91
Commission and Contract Work	2.47
Purchased Electric Power	.59
	$100.00

An article that a factory would deliver at a cost of $100 could be reduced only 59 cents if the electric power were free. It is difficult to believe that the average industry would move to another location in order to reduce the cost of an item that already has been reduced to less than 1 per cent of the total cost. The foregoing table is compiled from the 1947 Census of Manufacturers.

This 1947 census was prepared so that the results are published in separate reports for each industry. An examination of the reports available to the writer indicate that this cost of electric power in manufacturing—59 cents—compares with 82 cents, as shown in the 1939 census.

An advocate of "cheap government power" recently met with the manager of an electric company and others to lay plans toward inducing a manufacturer to move from Kansas City to their community. He joked the electric company's representative by saying "Why don't you folks offer an electric rate comparable to that of TVA?" The response came quickly "If you think that will do the trick we'll see how it works out."

When the manufacturer arrived for the conference the electric manager said "Mr. Jones, would cheap industrial rates persuade you to move here?" "Certainly not," was the reply. "My power bill is peanuts—simply peanuts. It is less than $1,000 per month out of $150,000 of manufacturing cost."

Another individual went on a "state industrial tour" to the East. While there he suggested to a manufacturer that perhaps "cheap industrial power" would interest him. "Not particularly" was the answer. "Of course it should be adequate, dependable, and reasonable. But what I am interested in is good healthy living conditions for my employees; good recreational facilities nearby where my employees may find diversion from their work; and, above all, good, substantial, and active churches to provide the spiritual side of life all employees and employers need."

Business Week of February 5, 1949, carries an advertisement of the Pennsylvania Railroad, which calls attention to 3,000 communities along its rail route that are potential locations for industrial plants. Advantages offered are listed in this order:

1. Favorable taxes
2. Plenty of good labor
3. An abundance of natural resources
4. Best rail transportation
5. Best service to Atlantic and Great Lakes ports
6. Quick access to major highways
7. Direct access to 9 of the nation's 11 biggest cities

No mention is made of "cheap industrial power," but industry has certainly flourished in Pennsylvania and its surroundings, without subsidized cheap power. A recent advertisement by the Allegheny Ludlum Steel Corporation of Pennsylvania states the power industry in Pennsylvania has added 2,034,750 kilowatts to its generating capacity in that state since 1945, an increase of 51 per cent. None

of this is subsidized "cheap" government power.

The *Blue Book of Southern Progress for 1949* has an advertisement of the Oklahoma Planning and Resources Board in which business executives tell why their factories located in Oklahoma. In the order named, William C. Decker, president of Corning Glass Works, said "Factors which influenced us to locate in Oklahoma were: availability of high-grade workers; ample supply of low-cost gas; near-by supply of superior glass sand; dependable electric power; the location in relation to our markets."

William Caplin, president of Seamprufe, Inc., stated "We were attracted to Oklahoma because of the good supply and intelligent character of labor available for garment manufacturing, and because from Oklahoma we can ship overnight to so many southeastern, southwestern, and western cities."

Robert L. Hays, president of The Kaynee Company, said "Oklahoma presented such a new and unexploited area for the textile industry. There was adequate native labor available. State laws were fair and attractive for the distribution of our product."

In a 1948 report of "The Power Survey Committee of the New England Council," relating to power in New England, the committee had this to say about the importance of the cost of power in manufacturing:

> The importance of the cost of power in manufacturing has been greatly overemphasized. Except in a few industries the cost of power averages less than 2 per cent of the total value of manufactured products in New England industries. It is, therefore, obvious that the question of cheap power is not a determining factor in management decisions regarding location of manufacturing plants except for certain heavy industries. Other factors such as labor, markets, and materials are the principal ones which govern these decisions.

The president of the New England Council made an offer of $100 to anyone who would bring proof of a textile mill moving out of New England because of high power costs in New England. This was in March, 1949, and to date no one has brought proof of such a move.

In a 1949 report of the National Planning Association on location of industry an example of a method used in selecting a location for an industry is cited thus: "The decision of the B. F. Goodrich Company to build a new heavy rubber tire and tube factory at Miami, Oklahoma, in 1945 is a good example of the thorough way a company may pick a plant site by working down within a general area to a specific spot. Goodrich first decided that about 25 per cent of its tire business

¶ "CHEAP *government hydroelectric power does not magically bestow the surroundings with industry, wealth, and increased population. Yet, there is widespread propaganda in this country which repetitiously mesmerizes the people into a belief that industry locates wherever cheap government power is found.*"

could be served from a location south of Kansas City and west of the Mississippi. This tire demand was largely for replacements for automobiles and farm machinery. The plant was needed within this market area in order to cut transport costs since raw materials were much cheaper to move than tires.

"Goodrich studied 90 possible locations before deciding on its new site. Sixty-four locations did not have large enough supplies of cold ground water to be used for cooling and the list was knocked down to 26. Scarcity of power and fuel resources in other prospective locations cut the number of eligibles to 12. Nine of the remaining locations could not offer the outstanding railway service and good highways that a Goodrich plant would need; so there were three sites left. Miami, Oklahoma, finally won out by advantages in labor supply over one of the other cities, and over the other in speed of service to customers."

The price of electricity apparently did not receive much consideration.

About the TVA Area

FINGERS are generally pointed at the TVA area and statements are commonly made that "certainly TVA has industrialized its 7-state area," which includes Alabama, Georgia, Mississippi, Tennessee, Kentucky, North Carolina, and Virginia.

It is no secret that the entire South (not just the 7-state TVA area) has been more rapid in its industrial development than the country at large. It has been thus since the turn of the century.

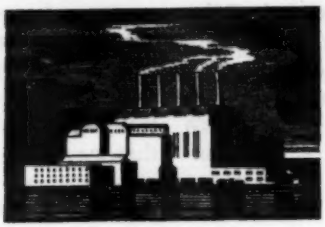
The *Blue Book of Southern Progress of 1927* had this to say about the South: ". . . with rapidly growing momentum, the sentiment in favor of the South as the coming center of industrial and general business activity is spreading throughout the land. The tide of popular sentiment is turning this way. . . . The foremost bankers and businessmen of America have come to realize that the South possesses a combination of advantages not found elsewhere in this or any other country, and they are turning their thought and their investments into this section on an ever increasing scale."

So it is no surprise to find that the South has finally hit its stride. And it's not surprising that the "7-state area" of TVA has come along fairly well with the rest of the South. But there is little to support any claim that "cheap" government power has played any dominant part in the vast industrial development of the South.

According to the same 1927 magazine "some of the nation's greatest manufacturing enterprises" had already found it profitable to locate in Tennessee. Among those listed were Aluminum Company of America, Crane Company, Dupont Rayon, International Harvester, American Printing, United States Cast Iron Pipe & Foundry, American Brake Shoe & Foundry, Franklin Process, American Zinc, and Tennessee Copper & Chemical Company. Tennessee was also forging to the front of the southern states in textiles. But all this goes back quite awhile.

There Are Exceptions

IT would be untrue to say that no industry is interested in cheap power. Electrolytic processing, refrigeration,



Realizing Assets Already in Hand

"COMMON sense suggests that real intelligent promotion and development of a sound native industry lies, not in baiting with tax subsidies and other 'loss leaders' which the taxpayers have to absorb —but in realizing the inherent potentiality of each area according to its resources, gifts, and ability. Creating new opportunities for industries already located is a better course."

chemical manufacturing, and a few others attach great importance to the cost of electricity. They require vast amounts of power. The following table shows the importance of power in these industries:

Cost of Electric Power Per $100 Of Manufacturing Cost

Aluminum	$30.00
Zinc, Electrolytic	18.60
Ice	17.20
Sodium	19.10
Chlorine and Caustic Soda	13.30

Electricity represents nearly one-third of the total manufacturing cost of aluminum. The importance attached to the cost of power is one reason why Aluminum Company of America located some of its plants in eastern Tennessee a long time before the conception of TVA. It built its own hydro power plants. That company also had plants located at Niagara Falls for many years.

The 1949 *Blue Book of Southern Progress* lists about 30 or 40 different industries in the South. Tennessee leads in two of these: chemicals and rubber products. Electricity plays a rather indifferent cost rôle in the production of chemicals and rubber products, since Tennessee is rich in phosphate deposits and has been at the top in output of phosphates and other chemicals for a number of years. It would seem far more likely that natural resources account for Tennessee's leadership in the production of chemicals.

Claim Electric Companies Retarded Industrial Development

ELECTRIC companies are sometimes charged, by the industry's critics, with not doing their part in providing plenty of cheap industrial power to the South. Yet many will recall that the late Wendell Willkie headed an electric company which served a large portion of the area before being taken over by TVA. It was nationally known for its successful operation.

Of the electric companies serving the South, the *Blue Book of Southern Progress of 1927* had this to say: "One of the great aids to the South's industry is the splendid work of the electric power companies. They are true pioneers in carrying their lines into new fields, sometimes but scantily occupied, helping to develop cities and to make lighter the work of the man who lives in the country and his wife, who, too often, has had a dreary life of drudgery. They are investing their capital and establishing electric service throughout the countryside, as well as in the small hamlets . . . so that home-seekers and manufacturers may be attracted. Their wires stretch for thousands of miles, and the time is fast coming when their service will be available everywhere and the power they supply is being sold at remarkably low rates. Their attitude is distinctly one of helpfulness and their faith in the future of the southern country they are helping to develop is one of the greatest bulwarks of the South today."

In the 1928 issue of the same magazine we find "hydroelectric developments in the South are requiring the expenditure of hundreds of millions of dollars, and for the last two years nearly one-half of the total increase in water-power development in the United States was in the South. . . . one company is planning an expenditure of about $100,000,000 to increase the vast power developments it already has in operation."

Consider this interesting item of more recent origin. The *U. S. Statistical Abstract* for 1948, page 279, shows Tennessee to be second from the bottom in growth of *per capita* income, 1933 to 1946, in a list of 14 southern states.

The *U. S. News and World Report* has recently been publishing a series of articles on economic progress of various sections and states. From these we note an increase in value added by manufacturing, 1933 to 1947. Tennessee is eleventh in the list of 14 southern states. The same publication (October 7, 1948, page 38) has a chart showing "Rising Industrial Production" of all states 1939 to 1947. In this, Tennessee is shown below the national average and again is second from the last of the southern states.

The *Morning Tennessean* (Nashville), August 23, 1949, calls the situation "disquieting" as the increase in *per capita* income for 1949 "was between 4 and 5 per cent less than the national average."

Can there be a better way to disprove these claims than by using the words of manufacturers as to why they chose a specific location?

If cheap government power were a primary factor in the locating and relocating of industry, how have such cities as Detroit, Cincinnati, Chicago, New York, and Pittsburgh managed to become our greatest industrial centers?

This is not to suggest that private electric companies can be (or are) indifferent to the industrial possibilities of their service areas. On the contrary, we have in recent years noted a number of instances where such companies, alone and in combination, have taken the lead in promoting the advantages of their respective service areas.

The recent full-scale promotional

program by the four electric companies in Alabama, Mississippi, Arkansas, and Louisiana is a good example of aggressive promotion based on a real foundation for attracting "new business." Public utility companies with millions of investments literally staked to the ground, are not likely to overlook the importance of getting a fair share of business located in their territories. But a "fair share" implies sensible, economic justification, including such factors as transport, labor, accessible markets, raw materials, climate, etc.

OVEREMPHASIZING one of the smallest items in the average industry's cost budget—electric power—is in itself a will-o'-the-wisp attraction. Needless to say, few major industries would be moved by that alone. And even if the contrary were true, wholesale shuffling around of industries from one area of our nation to another, on the basis of subsidizing a single, minor cost factor, would be a poor way to manage our national business economy.

If it were true that industries were moving South, deserting New England by the dozens, solely because of the cheaper wholesale power rates elsewhere (and we have seen that it is not true) where would that leave New England? If New England were, some time in the future, to have a lower power rate, and lure all the industries back home, where would that leave the New South? Common sense suggests that real intelligent promotion and development of a sound native industry lies, not in baiting with tax subsidies and other "loss leaders" which the taxpayers have to absorb—but in realizing the inherent potentiality of each area according to its resources, gifts, and ability.

Creating new opportunities for industries already located is a better course. If all regions could realize the full industry potentiality of business advantages they already possess, all would prosper, industrially and otherwise.

But a fly-by-night, bargain-hunting segment of industry, changing its address every few years like a poor-paying tenant, is a poor substitute upon which to build lasting prosperity.

"IF some members of Congress had their way, any dollar profit in excess of that earned in some arbitrary specified base period would be taken away to a considerable extent through additional taxes, regardless of whether current earnings are adequate or inadequate on the basis of a return on sales or a return on investments.

"Others would penalize the corporation financially if it does not regularly distribute two-thirds or more of its current earnings to stockholders in the form of dividends, and thus enable the government to increase its revenue by an unfair double tax upon these same earnings."

—IRVING S. OLDS,
Chairman, United States Steel Corporation.

Is the Demand Charge Justified?

An analytical study of the demand charge in modern industrial electric rate practice. The demand charge poses an interesting question of balancing the rights of different classes of utility consumers.

By ALFRED V. ROBERTS*

THE demand type of gas and electric utility rate schedule is based upon the premise that the utility's plant capacity is contingent upon demand. Consequently, it is reasoned, electric consumers operating on a low load factor should, in addition to the energy charge for current used, be charged an amount equivalent to the stand-by service represented by that portion of utility plant capacity required to be held in readiness to serve their individual demands.

Here is a premise, supported by well-established, nation-wide practice, which we all accept. The premise seems axiomatic and, therefore, does not seem to invite analysis.

Actually, what controls design in plant capacity?

The demand which controls the capacity of any generating plant is the yearly *peak demand of the community as a whole!*

The yearly peak of an individual industry may coincide with this community peak, or it may not. Certainly, if it does not, then the load factor upon which that particular industry operates has little or no special relationship to plant capacity costs. If, on the other hand, its individual peak does happen to coincide with the community peak, let us not forget *that every other customer is also contributing towards that peak.* There would seem, therefore, some measure of discrimination involved in making a special charge solely against that consumer whose individual peak happens to coincide with this controlling, composite community peak.

IN point of fact, under the operation of the demand type schedule, all consumers subject to it have to pay, regardless of when their peaks or lows fall. Thus, a consumer whose peak coincides with the community low and whose low coincides with the community peak—a most desirable consumer—is penalized just the same as one

*For personal note, see "Pages with the Editors."

whose peak and low correspond with those of the community. This, in itself, seems at variance with the theory back of the demand charge.

Quite apart from this seeming inequity of operation within the demand schedule itself, we find another factor on which even a greater question of equity may obtain.

In Table I are tabulated the consumer data for an electric company for the month of October, 1949. This was the peak month for the year 1949. Under column "A" are listed the numerous schedules under which current was sold.

These schedules, it will be noted, have been segregated into two major groups: *block and flat rate* schedules, and *demand* schedules. Column "B" shows the monthly consumptions in kilowatt hours. Column "C" gives these consumptions in per cent of total consumption.

Referring to the table on page 27, the community peak monthly consumption for the year 1949 was 21,270,352 kilowatt hours. This is the sum total consumption from every class of consumer during that month. It is the composite of the consumption of all takers from the smallest residential consumer through the whole gamut of commercial users, to the largest power consumer. Each, in proportion to his consumption of current, contributed to that community peak upon which is based plant capacity.

SINCE all consumers contributed toward that peak, it seems a sound statement that all consumers, therefore, should contribute towards the fixed costs attributable to the plant investment.

Instead, what do we find?

Table I disclosed that for 16,935,586 kilowatt hours, or 79.62 per cent of the consumption comprising the peak load upon which plant capacity is based, no effort was made (theoretically, at least) to assess charges to meet the fixed costs of plant investment. These costs have, theoretically, been all assessed against only 4,334,766 kilowatt hours or 20.38 per cent of total consumption!

Actually, since fixed production costs constitute in the neighborhood of 40 per cent of an electric utility's investment, we know that much of the charges attributable thereto must have been borne by the 79.62 per cent consumption billed under nondemand schedules. Certainly, since this consumption has contributed approximately 80 per cent of the peak load upon which is based plant capacity, it should theoretically contribute in the neighborhood of 80 per cent of the cost occasioned thereby. Instead, the burden of meeting these particular charges is reserved for approximately only 20 per cent of the consumption.

There is still another and broader approach to the whole subject of electric rate schedules. At present each class of consumer, each class of service, is studied and the costs of serving same are evaluated separately. The picture of the interrelationship of one class of consumer to another, of one class of service to another constituting together an integrated whole, does not seem to be generally appreciated.

WE might well consider, for instance, that industry provides

basic employment in the community. Around the personnel and payroll of industry grow the personnel and payroll of the wholesale and retail store, the building trades and related services, the restaurant, the bakery, the amusement center, the office, the professions, the transportation system, the government, the home—indeed the whole diverse activity which together makes up the modern city or community. In turn, this normal, healthy community growth creates demand for *more* industry. Thus, the various parts of the city unit are interwoven into a composite whole, the one dependent upon the other. They cannot be evaluated separately.

Yet, in the electric utility field we do just that—we evaluate each group separately. This interdependence of the various units which together make up the whole is not given specific consideration. There is no recognition, for instance, of the fact that one seasonal industry offsets another, each with peaks at different seasons. The fact that the employees of these selfsame industries help give the steady residential load, the desirable 24-hour refrigeration load, the desirable night load of street lighting are worth-while considerations. Industry, be it on peak or off peak, is the broad foundation upon which rests the whole community activity; this related community activity reciprocates and, in turn, helps build up industry. Recognition is also due the fact that upon this community *whole* the electric utility must be built and not upon any one part of it.

THAT this whole has a *peak* is natural and inevitable. It cannot be eliminated. That it can be modified is doubtful. Once a consumer is sold electricity as opposed to competitive services, the promotional value of the elec-

TABLE I

CONSUMER DATA FOR MONTH OF OCTOBER, 1949

A *Schedule*	*B* *Monthly Consumption KWH*	*C* *Per Cent Of Total*
Block and Flat Rate Schedules		
General Lighting	1,299,477	6.11%
Residential	4,316,445	20.29
General Power	3,798,770	
Commercial Cooking, Heating, and Refrigeration	484,717	2.28
Sign Lighting	11,777	0.05
Optional Power	1,726,197	8.12
Public Street Lighting (F)	276,320	1.30
Public Street Lighting (G)	20,760	0.10
Optional Power (Contract)	3,357,123	15.78
U. S. Army	1,644,000	7.73
Total	16,935,586	79.62%
Demand Schedules		
Large Commercial Lighting	698,458	3.28%
Optional Power	748,910	3.52
Primary Power	2,887,398	13.58
Total	4,334,766	20.38%
Grand Total	21,270,352	100.00%

tric rate ceases so far as that consumer is concerned. Thereafter his consumption is dictated by business or domestic requirements, as to quantity and load.

In conclusion it would seem that whereas the demand type schedule is supposed to distribute fixed plant costs equitably among those responsible for them, actually it assesses these charges in a manner which seems to discriminate against a very small minority of the whole.

The questions raised by these conclusions are both managerial and regulatory. Admittedly, the utility company's over-all allowable rate of return is derived from its general revenue returns from *all* customers. It is not suggested here that there is any improper or illicit advantage which the company, as such, obtains from the demand charges. But aside from that, the existence of inequity *between* classes of the utility's customers suggests the fair question of general rate practice review and possible overhauling, if such is needed. An economic preference for a more numerous class of customer can hardly be justified on the basis of simplicity or popularity or similar considerations.

Contrary to general belief, the relationship of each individual consumer to plant investment is, very nearly, in direct ratio to his consumption of energy regardless of the purpose for which current is used. The only practical basis, therefore, for equitably assessing these fixed costs would appear to be through the medium of the commodity charge.

People *Like* Radio on Streetcars—Busses!

"Public taste is often nebulous. This can no longer be said, however, as to public taste in transit radio. A poll conducted for the Post-Dispatch *among 23,000 bus and streetcar passengers by the Bureau of Business and Economic Research, School of Commerce and Finance, of St. Louis University, indicates beyond doubt that the great majority of passengers enjoy transit radio. The vote is 74.9 per cent in favor of transit radio, 15 per cent against, and 10.1 per cent who have no opinion.*

"The poll reveals some interesting results. Young people are overwhelmingly for music on the streetcars. Nearly 93 per cent of them favor it. Older people, those fifty years of age and more, are less enthusiastic. Thirty-one per cent of them are opposed.

"That the objectors really object there can be no doubt. The steady flow of letters to this newspaper, which began some nine months ago and which still continues, is ample proof. A 15 per cent opposition cannot be ignored, nor can support by 74.9 per cent be ignored.

"The opponents can well appeal their case to the Missouri Public Service Commission, charging invasion of privacy.

"At this point the ayes seem to have it."

—Editorial Statement,
St. Louis Post-Dispatch.

Washington and the Utilities

Senators Eye Chapman

ON June 14th, a syndicated columnist, Doris Fleeson, broke the news that Interior Secretary Chapman had rejected the so-called "Wright contracts" for agreement between the Southwestern Power Administration and power companies in the southwest area. The reason given was the alleged "service charge" by the companies for carrying public power which the Secretary was reported to feel did not square with the "public preference" clauses of the various Federal statutes. There was some effort to soften the impact of this report by suggestions that the contracts were "still under negotiation" and had been sent back to the parties for "further study."

Be that as it may, these were the contracts which SWPA Chief Douglas Wright concluded with the power companies. These were the contracts which he told a congressional committee last fall that he thought would be approved, and on which he would stand or fall. These were the same contracts which House Speaker Rayburn publicly defended in remarks to the House which were critical of "trouble making" by a national spokesman for the REA co-ops.

Whatever the exact status of the "Wright contracts," members of the Senate, such as Hayden (Democrat, Arizona), are likely to take an interested view of the extent of good faith which Interior Department leaders have shown in trying to reach agreements with the power companies. Interior Department appropriations were still to be acted on in the Senate. Last year several Senators said they would hold Interior to a realistic effort to reach such agreements with the private companies.

Some cynical observers are of the opinion that the private companies would find it impossible to write an agreement which Secretary of Interior Chapman would sign for the simple reason that he does not want to sign any contracts with any private electric company. All told, the situation seems to point towards a widened breach between the antiutility element of the Fair Dealers and certain southwestern Congressmen already considerably miffed over the administration's recent veto of the Kerr gas bill.

Permanent Status for WRPC?

A BILL which could, at some future time, be used to create a statutory foundation for the President's Water Resources Policy Commission has appeared in Congress. The commission, called into existence by executive order early this year, will expire December 1st, unless some other arrangement is worked out for continuing it.

Allegedly to carry out Hoover Commission recommendations for economic reorganization of the Federal government, two identical measures—S 3657, by Senator Paul Douglas (Democrat, Illinois) and HR 8663, by Representative Cecil F. White (Democrat, California)—are now in the legislative mill. While these bills are doomed to get nowhere at this session, their text may give a clue to a future pattern.

The two bills make no reference to WRPC. Yet, they could, in effect, give WRPC statutory permanence. They would transfer water resources functions of the Army Engineers to the Department of Interior, and create a 5-man "Board of Analysis for Public Works Projects," to be appointed by the Presi-

dent, without Senate confirmation.

The House bill was referred to the Committee on Expenditures in the Executive Departments, while the Senate version was referred to the more friendly Public Works Committee. Senator John L. McClellan (Democrat, Arkansas), chairman of the Senate Committee on Expenditures, is a noted champion of the Army Engineers, and bitterly opposed to absorption of their civil functions by Interior. He also is a member of the Public Works Committee.

The bills provide that the board would function "in the executive office of the President," members receiving $15,000 a year. They would periodically review projects already authorized by Congress as well as pass upon the feasibility of unauthorized projects before submission to Congress. The board would cover all major Federal civil public works, Atomic Energy Commission projects excepted, and would thus occupy a broader field than the WRPC, although water resources development would probably be its main function.

Senator Douglas insists that his measure is not White House inspired, and says that he conceived it after recent criticism of the Army Engineers' rôle in flood control and rivers and harbors work. Representative White has previously sponsored legislation desired by the Reclamation Bureau. The bill also would authorize the Secretary of Interior to submit his own version of a revised Reclamation law to the 82nd Congress. All Federal hydroelectric projects are specifically placed under review of the proposed board.

Hydro Power and New England Politics

WASHINGTON forces of the Democratic party—including President Truman—have laid the lines for a New England congressional campaign this fall that will keynote Federal power developments in that region as reward for support of Fair Deal candidates for House and Senate.

This is etched in bold relief by President Truman's criticism of the recently signed Rivers and Harbors and Flood Control Authorization Bill (HR 5472). He made it plain that he was displeased with the proviso placing responsibility on the Army Engineers to survey the "Merrimack and Connecticut rivers and their tributaries, and such other streams" in New England "where power development appears feasible and practicable . . ." He said the survey should have been broader in scope.

Following the President's criticism, two bills were tossed into the legislative hopper, patently designed for campaign use. Identical in context, the two measures—S 3707 and HR 8747—are "To aid in the use, conservation, and development of the river basins in the New England states and the state of New York and to establish the New England-New York Resources Survey Commission."

The commission would be charged with the responsibility of formulating a comprehensive and coördinated plan for flood control and prevention; pollution abatement; domestic and municipal water supplies; navigation; hydroelectric power and industrial development and utilization; soil conservation; forest conservation; fish and wildlife conservation; development of recreation; and "other beneficial and useful purposes." Two years would be allowed the commission to complete its studies and submit its recommendations to the President and Congress.

There is little likelihood that either measure will be acted upon at this session of Congress, but good New England campaign material has been made available, especially when it is noted that the New York tie-in offers the New England states the lure of possible low-cost hydroelectric power from the projected and much talked of Niagara and St. Lawrence river developments.

Authors of S 3707 are Senators Theodore F. Green, Edward L. Leahy (Rhode Island Democrats), William Benton, Brien McMahon (Connecticut Democrats), and Herbert H. Lehman (Democrat, New York). The House bill is

authored by Representative Thomas J. Lane (Democrat, Massachusetts).

REA Continues Uneasy over Carolina Argument

ALTHOUGH Rural Electrification Administrator Claude R. Wickard has declined further comment on recent criticism by the South Carolina Electric & Gas Company against a proposed REA loan to a Palmetto state super coöperative (see "REA Jitters," page 847, June 22nd issue), there continues a state of uneasiness among some of his Washington advisers.

Following a series of full-page advertisements in metropolitan dailies, including *The Washington Post* and *The New York Times,* SCE&G President S. C. McMeekin carried the message of his company direct to the rural coöperative membership of South Carolina, utilizing full-page space in the dailies and weeklies of that state.

These advertisements pointed up the claimed waste of taxpayers' funds to construct duplicating transmission facilities that would furnish the co-ops with power at a rate seven-tenths of a mill higher than had been offered by the company. The insertions also made it plain that the state-owned Santee-Cooper Power Authority, the real beneficiary of the REA loan, was taking the first step in a plan that could bring about the forced liquidation of all privately operated power companies.

Reaction of both the public and the South Carolina press was heartening. Several American Federation of Labor and Congress of Industrial Organizations locals immediately responded with resolutions endorsing the company's position, while supporting editorial comment came from every section of the state.

Declaring that nobody can compete with government indefinitely, the Charleston *News and Courier* said the loan could serve no good purpose, but would destroy a substantial contributor to state, county, and municipal treasuries.

The Columbia *State* commented that if there is to be no respect for the investment of 30,000 stockholders who have put their money in this local company (SCE&G) and other companies throughout the country, there can be no assurance that the public will long furnish capital for such necessary enterprises.

The Greenville *Piedmont* declared the proposed loan a "plain overstepping of bounds as far as the REA is concerned," while the Charleston *Evening Post* said if the company is correct, the proposed system of duplicating lines "would be a wasteful, even a scandalous diversion of public funds, and constitute a costly blow at private enterprise."

Other South Carolina papers commented in similar vein as the issue spilled over into North Carolina where the Charlotte *News* asserted that if the Congress feels that public transmission lines should be built, then the Congress should authorize them "one by one."

Tidelands Decision Disturbs States

BELIEVERS in theories of certain rights of the states are evaluating their dubious position in the light of the recent U. S. Supreme Court's decisions in the so-called tidelands oil cases. The Court's refusal to recognize any property rights of the states of Louisiana and Texas in submerged coastal lands has shattered the last hope of any legal barriers to preserve state interest in such lands.

Further, because of the lateness of the session, efforts to get quitclaim or other corrective legislation enacted by the 81st Congress would appear hopeless. Senator Joseph C. O'Mahoney (Democrat, Wyoming), chairman of the Senate Committee on Interior and Insular Affairs, sympathetic to the Federal claims, is not inclined to act on any legislation favorable to the states, although he has hazily indicated he might go along with some sort of "interim" congressional resolution which would temporarily validate those leases negotiated in good faith and now in effect between the affected states and private producers.

The House may again pass a bill (HR 8137) to restore title of the states to lands under interstate rivers and tidal areas, but it has no chance of final enactment due to Senate opposition and the certainty of a presidential veto.

As for the "interim" resolution, it would have a time limit and faces delaying action at the hands of Senator O'Mahoney who is disposed to refer the proposal to the Department of Interior for its opinions and suggestions.

In the meanwhile, the attorney general of New Jersey has declared that his state will not consent to any steps by the Federal government to apply the tidelands doctrine to New Jersey's amusement, fishing, and shipping industries. Pushed to extremes, the Court's line of reasoning might even give the Federal government proprietary rights in some of the Atlantic City boardwalk properties. No "tidelands" test case has yet involved an "original" state, such as New Jersey.

A hydroelectric angle was recently introduced by Governor Allan Shivers (Democrat) of Texas in a speech at Tulia, Texas. He pointed out that dams built in the Brazos river with funds of the state might revert to the Federal government under the "recapture clause" of the Federal Power Act after fifty years, if the Federal Power Commission has authority to license a state's use of its own water on navigable streams.

Interior and Congress

THE Interior Department's bill (HR 7351) to amend the Reclamation Act is viewed with a critical eye by no small segment of Congress, and may die with adjournment, now expected around August 5th. This measure would give the Secretary of Interior authority to pass on proposed multipurpose projects, subject only to later congressional appropriations for programs he may have approved. In addition, it would liberalize interest, term payments, and other requirements on irrigation projects, as well as broaden the Secretary's power in determining non-reimbursable features of the projects.

Chairman J. Hardin Peterson (Democrat, Florida) of the House Public Lands Committee has said that he will seek to "discharge" the Rules Committee on the bill in a motion to be made on July 18th. However, he is skeptical that the House membership will either overrule the Rules Committee or finally pass the bill in its present form. House procedure could cause the measure to be passed over several times on any discharge motion, thus serving to send it to oblivion for the reason that the House may be adjourned before passage of twenty-one days, the minimum period in which Peterson could again make a "discharge" motion.

There is also indication from Peterson and other sources of an increasing sentiment among House members to weigh with considerable care any legislation designed to increase the powers of the Interior Department or the Bureau of Reclamation.

FPC Aloof to Interior's Kings River Plans

IT seems clear that the Federal Power Commission will neither support nor oppose the Interior Department's bill to authorize Federal development of the North Fork of the Kings river in California. This bill (HR 5264), by Representative Cecil White (Democrat, California), is pressed for by the Reclamation Bureau in an effort to check the Pacific Gas and Electric Company, now seeking a license to develop the same stream.

The House Public Lands Committee, following its usual procedure, invited the commission to give its views on the White Bill. In a polite but tersely worded statement, FPC Chairman Mon C. Wallgren declined to do so. He pointed out that the commission is now considering an application for a license which would seem to foreclose the commission from expressing any opinion on the White Bill at this time. Meanwhile, it would appear that the White measure is slated for demise with the current session of Congress.

Exchange Calls And Gossip

Antigambling Action Postponed

TELEPHONE companies are reported to be uneasy about the Federal antigambling statute now on the Senate calendar. The bill still makes it unlawful for any person to "lease, furnish, or maintain any communication facility . . . used to transmit or receive gambling information." Any person who "knowingly" violates the provision will be subject to fines and imprisonment. Telephone and telegraph companies feel that they might still be subject to oppressive enforcement of any such Federal statute. Action on the bill was postponed in the Senate last month.

Opposition was said to be increasing in the House Interstate and Foreign Commerce Committee against taking up the bill, although a recent Gallup poll showed a popular preference for banning gambling wires by a margin of 3 to 1. Even among persons who admitted they are accustomed now and then to betting on races or indulging in various other forms of gambling, there was considerable sentiment for the McGrath proposal. The antigambling bill grew out of the Attorney General's conference on organized crime, which was held in Washington, D. C., in February.

Home Wire Tapper Upheld

A TELEPHONE subscriber has an "absolute right" to protect the use made of his telephone, the New York Appellate Division, Second Department, ruled unanimously recently in reversing the conviction of three men accused of illegal wire tapping. In a 3-to-2 decision, the court dismissed the indictments.

The case stemmed from telephone evidence offered in a divorce action in Brooklyn Supreme Court.

The appellate division held that when a telephone subscriber consented to the use of his line by his employee, a member of the household, or the subscriber's wife, there was a "condition implied" that the telephone "will not be used to the detriment of the subscriber's business, household, or marital status."

The subscriber, the court continued, may determine if his line "is being used to his detriment" by having his own line tapped or otherwise checked "so that his business may not be damaged, his household relations impaired, or his marital status disrupted."

The indictments charged those involved with violation of § 1423 of the Penal Law, under which it is illegal to break, tap, or make connection with any telegraph or telephone line without legal authority.

The court also reversed the conviction on "errors committed in instructing the jury." It held that proof with respect to the contractual provision between the subscriber and the telephone company as to attachments was "irrelevant and the instruction that its breach constituted unlawfulness within the pertinent penal provision was erroneous."

Transit Radio Suits Barred

JUDGE Edward A. Tamm of the U. S. District Court for the District of Columbia last month dismissed three suits brought to prevent radio on streetcars and busses in Washington, D. C. The suits were brought by the Transit Riders

Association, with a stated membership of 500, and by three other individuals. They claimed that "forced listening" in public vehicles was unconstitutional and a violation of a right to privacy.

Judge Tamm said, in announcing his decision, "basically there is no legal right of the petitioners that has been invaded, threatened, or violated."

After the ruling, Washington Transit Radio, Inc., and WWDC-FM announced they would install more equipment on transit vehicles.

The petitioners, in claiming violation of their rights, said that the "interests of personality" must be protected against the "constantly increasing intrusion of commercialism." Also advanced was the contention that there is a freedom "not to listen" that the court should enforce, because transit radio compels a rider to listen to broadcasts when he may want quiet. It also was described as a clash between "freedom of attention" on one side and "freedom of advertising" on the other.

Meanwhile, transit radio proponents were attacked on another front, when the CIO asked the Federal Communications Commission to revoke the licenses of FM stations providing radio programs for busses and streetcars. The CIO claims transit radio carries the danger of "forced listening to political propaganda."

Must Hear Rate Case

ADMINISTRATOR Thomas A. Kennelly of the Rhode Island Public Utilities Division must hear the latest telephone rate case, but has the right to limit the evidence, Attorney General William E. Powers ruled recently.

The decision was said to mean that Kennelly may avoid such protracted rate hearings as have been going on since 1947 and confine the present case to evidence showing the effect of wage increases, new or added taxes, and similar influences on the telephone company's financial condition.

The New England Telephone & Telegraph Company, after its initial rate increase request in 1947, was granted an aggregate increase in annual revenues of $3,200,000 in a decision by the state public utilities appeal board last December 15th. The company had sought in its several rounds of rate boost petitions increased revenues of approximately $5,000,000 annually.

Although NET&T could have appealed the hearing board's decision in December to the state supreme court, it did not do so but accepted the higher rates granted and then early this year filed a new rate petition with Kennelly. The higher rates now sought would yield approximately $1,700,000 in added income above the $3,200,000 previously granted.

Contending that there had not been sufficient time for the company to have determined what revenues the December rates would have yielded in a full year, the state, through its chief counsel, Abraham Belilove, filed motions with Kennelly to quash the petition and, lacking this, to limit the evidence. Both motions were submitted by Kennelly to the attorney general for his opinion.

Rate Hearing Delayed

THE New Jersey Department of Public Utilities recently announced that no date would be fixed for cross-examination in the New Jersey Bell Telephone Company's intrastate rate increase case until the superior court decides the company's appeal from the $2.50 weekly wage raise granted its workers by a state board of arbitration. The cross-examination had been scheduled for June 20th.

The company is seeking an increase of $9,800,000 annually in its intrastate rates and wants $1,800,000 of this increased revenue immediately to cover the salary raises allowed about 11,000 workers by the arbitration board.

A decision in the salary case is not expected before August 1st. Argument on the appeal was scheduled before Judges McGeehan, Colie, and Eastwood of the appellate division June 26th at Trenton.

Courtesy, The (Baltimore) Sun

LO, THE VANISHING BUFFALO!

Nickel Phone Call Ending

On January 1st, the 5-cent call from a telephone booth will end under a recent decision of the New York Public Service Commission granting the New York Telephone Company its first permanent rate increase in twenty years. The new coin box rate will be 10 cents. The telephone structure of virtually the entire state will be affected by the rate changes and will result in increases, varying according to locality, and ranging from zero to as high as 23 per cent for some business users.

The 5-cent coin box phones were introduced generally in 1911 but had been vested, as a money-making venture, since 1890 when the first booth was installed in the old Barclay street ferry house, now known as the Hoboken ferry.

The new rates became effective on May 4th. The effective date of the coin box changeover was fixed for January 1st, because of time needed to make mechanical adjustments. During the period up to January 1st, the commission granted the company the right to impose a temporary 2 per cent surcharge on all subscribers' basic bills to collect the income which the company says is needed to maintain adequate phone service.

Under the decision, the company was also granted permission to put into effect its "metropolitan service plan" under which Westchester county and Nassau county would become part of the New York city phone system. The plan eliminates toll charges for calls within the area and permits them to be billed as part of the regular monthly bill.

Under the increases, the commission said the company would receive $48,490,000 annually in additional revenue, although it had asked for increases that would have given $61,000,000 in increased income. The revenue from the 10-cent coin box telephones is expected to provide by itself $12,000,000 annually.

Sells Exchange to Insurance Company

THE Virginia Telephone & Telegraph Company has sold its new exchange and office building in South Boston, Virginia, to the Mutual Life Insurance Company of New York for $108,000, it was announced last month.

The property has been leased back to the utility for twenty-five years, with options to renew the lease for five successive periods of five years each.

Announcement of the transactions was made jointly by Judson Large, president of Virginia Telephone & Telegraph, and John P. Traynor, vice president of Mutual Life.

REA Rescinds Phone Loan

"SPITE lines" as an issue has been raised by the Rural Electrification Administration for the first time in its rural telephone loan program. Recently the REA had to rescind a loan of $93,000 to a coöperative in Iowa Falls, Iowa. The reason was the decision of the Bell telephone system to supply service in the area, which made the proposed co-op operation infeasible.

In explaining the rescission of its loan, REA claimed that the Bell system previously had been unwilling to serve the area. The Bell system reversed its position after the coöperative setup had been arranged—in REA's view—and announced that it stood ready to serve the surrounding rural territory. Although the co-op suggested that the Bell action was a "spite-line" activity, recalling early days of the rural electrification program, it expressed satisfaction with the result. The REA statement pointed out that, in this instance, the objective of the rural telephone law had been accomplished.

Dissatisfaction has been noted among REA officials with the slow pace of the rural telephone program. The half-dozen loans approved up to the end of May accounted for less than one-half million dollars.

Furthermore, REA cannot hope to lend anything like the $25,000,000 Congress made available.

There is serious doubt whether it will even be able to put out $10,000,000, which was the rock-bottom figure considered as a possibility during the early days of discussions of the program. This may explain the recent action of the House in halving President Truman's $50,000,000 budget request for telephone loan funds for the coming fiscal year.

PROCESSING at a slow pace and costly overhead on handling rural telephone loans worry REA. Out of 500 applications on hand, only 70 have advanced to a serious study stage. Ten per cent probably will be rejected and about 10 per cent of the others appear to be good risks. But the remaining 80 per cent are properties which require time-consuming studies. One speed-up suggestion has been to put the borrower on early notice as to his fixed equity requirements.

REA now has to exchange views several times before the required "equity" can even be determined. The cost of handling loans to date has been chalked up to "education and training" of staff. But the expense is such that REA is not disposed to continue the present practice indefinitely.

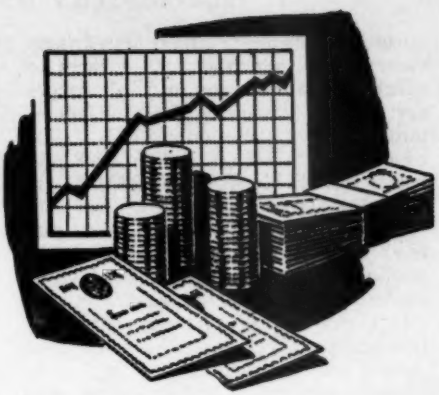
Seeks Rate Raise

SOUTHERN BELL TELEPHONE & TELEGRAPH COMPANY last month asked the Kentucky Public Service Commission for a rate increase of $2,691,000 a year. The higher rates were scheduled to go into effect July 6th, after the company posted bond to insure repayment if the commission should disallow the request.

Claude J. Yates, Southern Bell's Kentucky manager, cited a continued rise in the cost of operations as the reason for the latest increase. Southern Bell's previous three higher rate requests also were predicated on rising costs of operation.

The increase amounts to about 12 per cent over all.

Financial News and Comment



By OWEN ELY

Should the Utilities Plan Another Big Construction Program?

THE chart on page 39 illustrates the great changes which have developed in the electric utility industry in the past twelve years. Following are the comparisons:

	1938	*1949*	*Per Cent Increase*
Net Plant Account (Bill.)	$12.4	$15.6	26%
Generating Capacity (Mill. KW)	33	50	52
Electric Output (Bill. KWH) .	104	233	124
Electric Revenues (Mill.)	$2,170	$4,370	101
Gross Income (Mill.)	$820	$1,020	24
Earned for Common Stock (Mill.)	$360	$650	80
Common Dividends (Mill.) .	$290	$450	55

The lessons to be drawn from these figures are not new, but need to be stressed within the industry and more fully appreciated in regulatory and political circles. The industry has been "laying golden eggs" for its customers during 1938-50, but this can't be expected to continue indefinitely. With an increase in the estimated rate base of only 26 per cent, the industry was able to increase output by 124 per cent. The increase in the rate base was retarded by the heavy plant write-offs favored by Washington since 1933, together with a moderate dividend pay-out; plant account is now far below reproduction cost. On the other hand greater pooling of power facilities, the intensive use of obsolete and reserve capacity, and more recently the greater efficiency of new generators installed, have permitted much more effective plant use than in the 1930's.

REVENUES from this increased output have been cut sharply, as the utilities for the most part have voluntarily passed along these benefits to consumers. In the meantime, fuel costs and other expenses have been rising faster than revenues—fuel cost jumped from $147,000,000 in 1938 to $773,000,000 in 1948, dropping slightly in 1949. As a result gross income (which is the approximate measure of operating profits) increased only 24 per cent, or even less than the rate base, and only about one-fifth as fast as output. The utilities were able to "get by" with this very small gain, and raise some new equity funds for construction, largely be-

DEPARTMENT INDEX

cause of the administration policy of cheap money rates, which permitted them to effect a large reduction in fixed charges and preferred dividends. Thus in 1949 interest charges were only $242,000,000 compared with $285,000,000 in 1938, and preferred dividends $104,000,000 *v.* $123,000,000.

To summarize, the utilities have benefited hugely since 1938 by (1) increased pooling of facilities, (2) use of spare capacity, (3) increased efficiency, and (4) cheap money. These benefits have practically all been passed on to the consumer, with the utilities retaining barely enough earnings to remain on an even keel financially. Moreover, there has been no skimping of maintenance (except as forced during the war, and since restored), no flexible or dual accounting, no promotional financing such as characterized the 1920's.

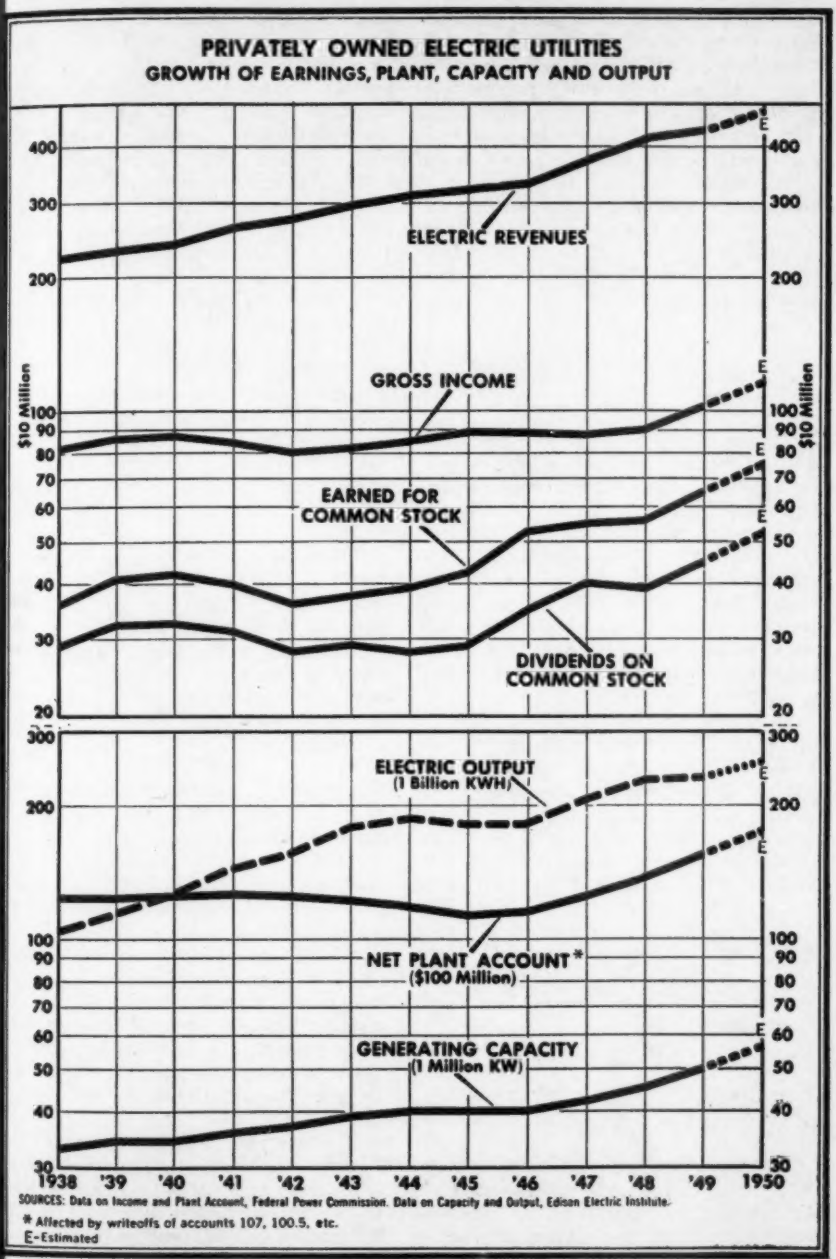
BUT because of the marvelous records hung up by the electric utilities during the war and postwar periods, there is some danger that the consuming public and the regulatory commissions may now take it for granted that the utility companies can continue to "pull rabbits out of the hat." Certain questions are bound to arise: Is there danger that the utilities, goaded by Washington's somewhat politically colored perennial cry of power shortages, and spurred by the highly colored forecasts of ever-mounting prosperity, may expand too rapidly? Have the competitive effects of cheap natural gas, now being extended to large new areas by the growing network of pipelines, been fully appraised? Are the electric utilities, in some cases, planning for greater reserve capacity than may be needed under future operating conditions? Will mounting taxes, depreciation, and fixed charges eventually outstrip the operating economies to be realized?

Robert Selltitz in *The Wall Street Journal* (April 8th and June 7th) and John Callahan in *The New York Times* (April 23rd) have given excellent summaries of present trends in the industry, including high lights of the EEI convention talks. According to the views of optimistic leaders, such as retiring EEI President Elmer Lindseth (who also heads Cleveland Electric Illuminating), President Philip Sporn of American Gas & Electric, and Chairman Curtis Calder of Electric Bond and Share, the electric power industry faces a continued future of fantastic growth, and should keep its construction program in high gear for at least another 5-year period. Thus the $7 billion spent to date since the end of the war must be matched by another $7 billion through 1954, it is said. Some of this increase is designed to restore the margin of capacity to its former level around 20 per cent (compared with only about 5 per cent in 1947).

ON the other hand, many utility executives realize that the increased use of electricity necessary to support this big expansion program won't just grow like Topsy, but must be "sold" to the consuming public. Sales staffs which were depleted during the war are now being rebuilt. Selling groups have held many conferences this year, and the Edison Electric Institute's commercial division has outlined a sales drive to recapture some of the market already being lost to the gas appliance industry. Detroit Edison has offered free wiring to buyers of electric ranges and dryers, finding that the funds are much better spent in this way than if devoted to appliance advertising.

Most electric utilities do an excellent job of projecting their sales and earnings a year or two ahead, and budgeting their construction programs accordingly. Moreover, it isn't necessary now to order generators so far ahead, and programs can be more flexible than just after the war. Hence the danger of overbuilding won't be too great *unless the utilities fail to foresee when general business activity may become abnormally high.*

While there have been many instances of poor forecasting of near-term economic trends in recent years, both by government and business, one broad lesson which history seems to have taught us is that every great war is followed by about a decade of prosperity, after which


PRIVATELY OWNED ELECTRIC UTILITIES
GROWTH OF EARNINGS, PLANT, CAPACITY AND OUTPUT
ELECTRIC REVENUES
GROSS INCOME
EARNED FOR COMMON STOCK
DIVIDENDS ON COMMON STOCK
$10 Million
ELECTRIC OUTPUT (1 Billion KWH)
NET PLANT ACCOUNT* ($100 Million)
GENERATING CAPACITY (1 Million KW)
E
1938 '39 '40 '41 '42 '43 '44 '45 '46 '47 '48 '49 1950
SOURCES: Data on Income and Plant Account, Federal Power Commission. Data on Capacity and Output, Edison Electric Institute.
* Affected by writeoffs of accounts 107, 100.5, etc.
E-Estimated

there is a major economic adjustment. We are now about halfway through such a decade, after which (unless Washington decides to run the printing presses and have real inflation) we may have to adjust ourselves to a lower level of economic activity. Hence we believe that the utilities should keep this readjustment in mind, and not build up ample surplus capacity or order too many generators *in relation to high industrial activity*. The lesson of the 1930's should not be forgotten too soon.

Favorable Outlook Seen for Preferred Stocks

KIDDER, PEABODY & Co. recently issued an 8-page tabulation of utility preferred stocks. Stocks are arranged alphabetically, with data on the number of shares, price and yield, call price, and special notations as to sinking funds and surtax benefits. (Dividends on new money issues since 1942 carry full 85 per cent exemption for corporate holders, while refunding issues have such an exemption only on the 24 per cent normal tax.)

In the preamble, the firm strikes an optimistic note regarding the market outlook for utility preferred stocks, pointing out (1) the present shortage of seasoned issues; (2) the continuing wide spread between preferred stock yields and high-grade bond yields (about 3.71 per cent *v.* 2.61 per cent, or a differential of 42 per cent); (3) the outlook for stability in the government bond market following the recent moderate decline; and (4) the stimulus to demand resulting from the new "Prudent Man" law in New York state, effective July 1st.

Brokers' Analyses of Utility Stocks

GEYER & CO., INC., has issued a 6-page analysis of *Northern Indiana Public Service*. It points out that while the stock is unlisted, the company is one of the larger utilities, with annual revenues of over $45,000,000. The company will have nearly 3,000,000 shares of common stock outstanding after the completion of current financing. It has enjoyed a remarkable growth record, quite comparable with those of companies in the South and on the Pacific coast. Thus during 1940-49 electric revenues gained 113 per cent compared with 89 per cent for the industry; and gas revenues increased 135 per cent. Share earnings have more than doubled since 1945.

Based on the shares of common stock to be outstanding in the near future (after the present "rights" offering is completed), earnings for the twelve months ended April 30th were $1.99 a share. With allowance for further increase in shares due to potential conversion of the preference stock, earnings for the calendar year 1950 are estimated by Geyer & Co. at $2 and next year at not less than $2.15.

The company obtains 36 per cent of its revenues (electric and gas) from industrial customers, and the general feeling that it is in a highly industrialized and economically vulnerable area may be a factor in the current yield of nearly 7 per cent on the common stock. The company serves the important steel cities of Gary, Hammond, etc.

HOWEVER, Geyer & Co. points out that in the past five years electric revenues from residential, rural, and commercial customers increased 64 per cent, while revenues from industrial customers gained only 21 per cent. Moreover, the management is said to have estimated that a reduction of as much as 50 per cent in kilowatt-hour sales to industry would only reduce net earnings by about 17 cents a share. It cites the company's experience during the steel strike last October when net income for that month exceeded both the previous month and the same month of 1948.

The company has been buying about 71 per cent of its power requirements, but a program of constructing new generating facilities which should be completed by the fall of 1951 will permit it to reduce purchased power to an estimated 30

per cent of requirements. Eventually annual savings of about $2,200,000 should thus be realized, it is estimated, which would be equivalent to about 45 cents per share after tax adjustments; however, the full amount could probably not be realized until 1950.

The company also expects to benefit by

CURRENT UTILITY STATISTICS AND RATIOS

	Unit Used	Amount Latest Month	Amount Latest 12 Mos.	Per Cent Increase Latest Month	Per Cent Increase Latest 12 Mos.
Operating Statistics (April)					
Output KWH—Total	Bill. KWH	25.4	298.1	10%	4%
Hydro Generated	"	8.3	—	2	—
Fuel Generated	"	17.1	—	14	—
Capacity	Mill. KW	64.6	—	12	—
Customers, no.	Mill.	43.5	—	5	—
Fuel Use: Coal	Mill. tons	6.8	—	3	—
Gas	Mill. MCF	47.7	—	18	—
Oil	Mill. bbls.	5.3	—	36	—
Coal Stocks	Mill. tons	18.0	—	D31	—
Sales, Revenues, and Rates (March)					
KWH Sales—Residential	Bill. KWH	4.4	46	13%	13%
Commercial	"	3.1	37	8	8
Industrial	"	9.2	104	4	D4
Total, incl. misc.	"	23.1	259	7	2
Revenues—Residential	Mill. $	126	1,382	11	11
Commercial	"	89	1,041	8	7
Industrial	"	105	1,207	4	D1
Total, incl. misc. sales	"	353	4,017	8	6
Revenues and Income (March)					
Elec. Rev., incl. sales to other utils.	"	390	4,443	8%	4%
Misc. Income	"	20	139	11	15
Expenditures (March)					
Fuel	"	65	702	6%	D9%
Labor	"	76	870	7	5
Misc. Expenses	"	65	762	4	2
Depreciation	"	36	396	13	8
Taxes	"	72	807	9	11
Interest	"	21	247	7	12
Amortization, etc.	"	2	21	D8	D15
Earnings and Dividends (March)					
Net Income	"	73	778	10%	14%
Preferred Div. (est.)	"	9	105	4	2
Bal. for Common Stock (est.)	"	64	673	12	17
Common Dividends (est.)	"	38	465	2	9
Balance to Surplus (est.)	"	26	208	37	89
Utility Financing (April)*					
Bonds	"	98	707**	D49%	26%
Stocks	"	168	331**	71	130
Total	"	266	1,038**	D9	48
Life Insurance Investments (January 1st-June 10th)					
Utility Bonds	"	—	530	—	2%
Utility Stocks	"	—	110	—	189
Total	"	—	640	—	15
Per Cent of All Investments	"	—	21%	—	D4

D—Decrease. *Data for all utilities (electric, gas, telephone, etc.), including refunding issues. **Four months ended April 30th.

improved natural gas business. Deliveries from the new Texas-Illinois pipeline should double the supply of gas in the Calumet and South Bend areas after 1951, and the company is currently obtaining an added supply for the Fort Wayne area from Panhandle Eastern.

The common stock equity, on completion of the present stock financing, will approximate 27 per cent and will increase to around 30 per cent if all the convertible preference stock should be exchanged for common shares.

Geyer & Co. estimates that, following the recent bond and stock financing, Northern Indiana Public Service will not have to do any additional financing until late 1951 at the earliest; and the $20,000,000 cash required to complete the scheduled construction program after that date can probably be raised mainly by sale of senior securities.

JOHN FEELY of Paine, Webber, Jackson & Curtis has prepared a description of *Central Illinois Electric & Gas,* which is currently quoted over-counter around 23, and pays $1.30. The company has greatly improved its position since the common stock was sold to the public by Consolidated Electric & Gas Company. Revenues are about 63 per cent electric, 24 per cent natural gas, 10 per cent transit, and 3 per cent steam heating. Electric sales are well diversified with 41 per cent residential, 24 per cent commercial, 31 per cent industrial, and 4 per cent miscellaneous.

Earnings on the common stock were $2.55 last year (*v.* $2.47 on a smaller number of shares in 1948). For the twelve months ended March 31, 1950, they increased to $2.61, so that the stock is selling at less than 9 times earnings. Current earnings do not fully reflect the benefits from the installation of a 20,000-kilowatt generating unit last summer; an additional 30,000 kilowatts will be added in 1952. The dividend rate has been maintained at $1.30 since 1945, but since the pay-out is now only about 50 per cent, an increase in the rate seems likely to materialize in due course, according to Paine, Webber.

JOSEPHTHAL & Co. has recently issued a 4-page analysis of *New England Electric System,* which may be summarized as follows: The system was reorganized in 1947 through a recapitalization and merger of the several holding companies which formed the old New England Power Association system. The present stock was originally placed on a $1 annual dividend basis but a combination of poor water conditions at hydro plants and large construction requirements necessitated a reduction in this rate to 80 cents in 1949, and the stock dropped to 8¼ (now 12¾).

Josephthal & Co. feels that after the company's construction program has been substantially completed, earning power of around $1.70 a share will be developed. It points out that system capacity was inadequate to meet postwar demands, since most of the steam plants were antiquated. Hence the company had to pay high prices for purchased power, particularly during periods of low water when hydro plants could not be operated at capacity. While two new 40,000 units were added in 1947 and 1949, the efficient capacity is still only about half the peak load, which means that the company is still forced to generate or purchase substantial amounts of high-cost power.

Around the end of 1951 the company will place in service a 33,000-kilowatt hydro unit and a 33,000-kilowatt steam unit, which will increase combined capacity over 15 per cent. During 1951-52 150,000 kilowatts more will be added, almost doubling postwar capacity. This will provide efficiently for about three-quarters of the present peak load and the company will still have its older steam plants and sources of purchased power to use for stand-by and peaking purposes. Josephthal & Co. points out that the increase in power costs during 1945-48 absorbed 80 per cent of the increase in revenues; but in 1949 power costs dropped $4,700,000 while revenues gained $1,400,000. Fuel consumption (for steam plants) has declined from 1.51 pounds in 1947 to 1.25 pounds in May, 1949. Installation of the big new units in 1951-52 with fuel consumption of only

two-thirds of a pound, will further reduce coal costs.

The firm estimates that by 1952 revenues will show a gain of $11,600,000 over 1949. Assuming that the incremental power will cost one cent per kilowatt hour and that other costs will increase by $1,000,000, the company should be able to realize a net profit after taxes of $3,300,000 or 45 cents a share on the additional revenues, which would bring estimated earnings up to $1.70. This makes no allowance for any improvement in the unsatisfactory earnings from the gas and transit divisions.

KERR & Co., engineers, has issued a 4-page article on *Tennessee Gas Transmission Company*. The latter company pioneered in the transmission of natural gas from Texas to the Appalachian area in 1944, and expansion has continued at a rapid rate. Capacity will be increased about 50 per cent in 1950 with a transmission line from northeastern Kentucky to a point near Buffalo. The company also wants to expand about 25 per cent more by extending this service to eastern New York and to New England. It is also building a stripping plant in Kentucky to recover liquid hydrocarbons from gas, to be sold to Mathieson Chemical Corp., which company will be jointly owned by Mathieson and by stockholders of TGT. Earnings for 1950 are estimated by Kerr & Co. at $2 to $2.25. The stock is currently quoted around 30 to yield 4.7 per cent, based on dividend of $1.40.

A. G. Becker & Co. has prepared a brief report on *Brooklyn Union Gas Company*. It points out that the stock is selling at only about 10 times the current earnings of $4.39, and that earnings are expected to increase in the near future to $5. It also anticipates an increase in the present $2 dividend rate to $2.50-$3. The introduction of natural gas for mixing purposes in the fall of 1950 will improve the quality of the company's earnings, since "the price stability of natural gas as compared with the volatility of the oil now being used should permit a correction of wide fluctuations in income experienced in the past."

A NUMBER of analyses have been issued of *Toledo Edison* in connection with sale of the common stock holdings by Cities Service Company, and the later "new money" equity financing. First Boston Corp. in a 5-page memorandum has given a brief description of the company's business and territory, property and construction program, capitalization, rates and regulation, earnings and dividends. Toledo is the fourth largest city in Ohio and the second largest port on the Great Lakes in tonnage handling. Well-known industrial companies located in the city are the two leading glass companies, Libby-Owens-Ford and Owens-Illinois; motor and accessory companies include General Motors, Willys-Overland, Spicer Electric Auto Light, and Champion Spark Plug; and other important customers are Sun Oil, Toledo Scale, National Biscuit, etc. Toledo Edison's revenues are 32 per cent residenital and rural, 18 per cent commercial, 42 per cent industrial, and 7 per cent wholesale and miscellaneous; the proportion of industrial business, while above average for the industry, is lower than for Cincinnati Gas & Electric and Cleveland Electric Illuminating. Toledo Edison's revenues have gained 106 per cent in the past decade compared with 89 per cent for the industry.

The company serves a large suburban and rural area with a population of over 200,000, compared with the 324,000 served in Toledo. All properties are interconnected and 94 per cent of power requirements are generated, principally at one big station with 285,000-kilowatt capability (100,000 kilowatts of which were installed early in 1949, permitting important savings). Of the remaining construction program about $8,000,000 will be spent this year and $13,000,000 next year, including another large generating unit. Most of the remaining capital funds will be obtained through sale of $7,500,000 bonds in December and possibly $2,300,000 equity financing in 1951. Capital ratios (reflecting current financing) approximate 55 per cent debt, 18 per cent preferred stock, and 27 per cent common stock equity.

RECENT FINANCIAL DATA ON GAS COMPANY STOCKS

		6/14/50 Price About	Indicated Dividend Rate	Approx. Yield	12 Mos. Ended	Share Earnings Cur. Period	Share Earnings Prev. Period	Share Earnings % Increase	Price-Earnings Ratio
Natural Gas—Retail									
C	Arkansas Natural Gas	11	$ .60	5.5%	Dec.	$1.26	$1.44	D6	8.7
O	Atlanta Gas Light	24	1.20	5.0	Mar.	1.97	1.55	27	12.2
S	Columbia Gas System	14	.75	5.4	Mar.	.95	.91*	4	14.7
C	Consol. Gas Util.	13	.75	5.8	Jan.	1.53	1.77	D14	8.5
S	Consol. Nat. Gas	47	2.00	4.3	Mar.	4.10	3.46	18	11.5
O	Equitable Gas	23	1.30	5.7	Mar.	1.91	—	—	12.0
O	Houston Nat. Gas	16	.80	5.0	July	1.45	1.42	2	11.0
O	Indiana Gas & Water	24	1.20	5.0	Apr.	2.01	1.53	31	11.9
O	Kansas-Neb. Nat. Gas	16	1.00	6.3	Dec.	1.63	1.55	5	9.8
S	Laclede Gas Light	7	.20	2.9	Mar.	.94	.91	3	7.4
C	Lone Star Gas	28	1.20	4.3	Apr.	1.82	2.03	D10	15.4
O	Minneapolis Gas	18	1.00	5.6	Mar.	1.41	.66	114	12.8
O	Mission Oil	44	2.20	5.0	Dec.	2.05	2.04	—	21.5
O	Mobile Gas Service	27	1.60	5.9	Mar.	2.66	2.44	9	10.2
S	Montana-Dakota Util.	12	.80	6.7	Mar.	1.33	1.37	D3	9.0
C	National Fuel Gas	14	.60	4.3	Mar.	1.01	.74	36	13.9
O	National Gas & Oil	6	.40	6.7	Dec.	.58	1.40	D59	10.3
C	Okla. Natural Gas	32	2.00	6.3	Apr.	2.99	3.39	D12	10.7
S	Pacific Lighting	53	3.00	5.7	Mar.	3.29	4.46	D26	16.1
C	Pacific Pub. Service	16	1.00	6.3	Dec.	2.08	3.21	D50	7.7
S	Peoples Gas L. & C.	126	6.00	4.8	Mar.	10.88	8.35	30	11.6
C	Rio Grande Valley	2	.12	6.0	Dec.	.19	.20	—	10.5
O	Rockland Gas	34	1.70	5.0	Dec.	2.73	3.36	D19	12.5
O	Southern Union Gas	20	.80	4.0	Dec.	1.34	1.16	16	14.9
O	Southwest Nat. Gas	10	(a)	—	Mar.	.41	.32	28	24.4
S	United Gas	18	1.00	5.6	Mar.	1.41	1.58	D11	12.8
S	Washington Gas Light	27	1.50	5.6	Apr.	3.05	1.30	135	8.9
	Averages			5.2%					12.3
Natural Gas—Wholesale and Pipeline									
S	American Natural Gas	32	$1.20	3.8%	Mar.	$2.10	$1.62	30	15.2
S	El Paso Nat. Gas	28	1.20	4.3	Apr.	1.73	2.36	D27	16.2
O	Interstate Nat. Gas	33	2.50	7.6	Dec.	2.50	2.03	23	13.2
O	Mississippi Riv. Fuel	35	2.00	5.7	Mar.	2.48	1.97	26	14.1
O	Missouri-Kansas P. L.	44	1.60	3.6	Dec.	4.24	1.32	221	10.4
O	Mountain Fuel Supply	24	.60	2.5	Dec.	.91	.91	—	26.4
S	Northern Nat. Gas	35	1.95	5.6	Mar.	2.76	2.63	5	12.7
S	Panhandle East. P. L.	44	2.00	4.5	Mar.	2.62	2.34	12	16.8
O	Republic Natural Gas	49	1.00	2.0	June	3.03	2.72	11	16.2
S	Southern Nat. Gas	38	2.00	5.3	Mar.	3.46	2.97	16	11.0
O	Southern Production	12	—	—	Mar.	.40	.38	1	30.0
O	Southwest Gas Prod.	15	—	—	Dec.	.51	.46	10	29.4
O	Tenn. Gas Trans.	30	1.40(b)	4.7	Mar.	1.72	1.43	29	17.4
O	Texas Gas Trans.	18	—	—	Mar.	.74	.72	3	24.3
O	Texas East. Trans.	20	6¼% Stk.	—	Mar.	1.67	1.24	35	12.0
	Averages			4.5%					17.7
Manufactured Gas—Retail									
C	Bridgeport Gas	24	$1.40	5.8%	Dec.	$1.88	$1.60	18	12.8
O	Brockton Gas Lt.	19	1.00	5.3	Dec.	1.48	.43	244	12.8
S	Brooklyn Union Gas	43	2.00	4.7	Mar.	4.39	—	—	9.8
O	Hartford Gas	38	2.00	5.3	Dec.	2.67	1.85	44	14.2
O	Haverhill Gas Lt.	28	1.80	6.7	Apr.	2.04	1.78	15	13.7
O	Jacksonville Gas	32	1.40	4.4	Dec.	4.77	6.12	D22	6.7
C	Kings County Ltg.	9	.40	4.4	Dec.	.64	—	—	14.1
O	New Haven Gas Light	28	1.60	5.7	Dec.	1.76	1.77	—	15.9
O	Providence Gas	10	.60	6.0	Dec.	.73	.64	14	13.7
O	Seattle Gas	12	.60	5.0	Dec.	1.49	.70	113	8.1
S	United Gas Improvement ..	27	1.30	4.8	Dec.	2.02	1.69	20	13.4
	Averages			5.3%					12.3

RECENT FINANCIAL DATA ON TELEPHONE, TRANSIT, AND WATER COMPANIES

		6/14/50 Price About	Indicated Dividend Rate	Approx. Yield	12 Mos. Ended	—Share Earnings— Cur. Period	Prev. Period	% Increase	Price-Earnings Ratio
Telephone Companies									
Bell System									
S	Amer. Tel. & Tel.	162	$9.00	5.6%	Mar.	$9.65*	$9.24*	4%	16.8
O	Cinn. & Sub. Bell Tel.	70	4.50	6.4	Dec.	4.80	3.76	28	14.6
C	Mountain Sts. T. & T.	104	6.00	5.8	Mar.	6.48	6.25	4	16.0
C	New England Tel.	101	4.75	4.7	Mar.	9.04	4.26	112	11.2
S	Pacific Tel. & Tel.	111	7.00	6.3	Feb.	7.20*	6.42*	12	15.4
O	So. New Eng. Tel.	34	1.80	5.3	Dec.	2.05	1.91	7	16.6
	Averages			5.7%					15.1
Independents									
S	General Telephone	30	$2.00	6.7%	Mar.	$2.06	$2.60	D21%	14.6
C	Peninsular Tel.	44	2.50	5.7	Dec.	5.66	5.25	8	7.8
O	Rochester Tel.	13	.80	6.2	Dec.	1.13	.80	41	11.5
Transit Companies									
O	Chicago S. S. & S. B.	9	$1.00	11.1%	Dec.	$ .91	$1.40	D35%	9.9
O	Cinn. St. Ry.	5	.30	6.0	Dec.	.77	1.57	D51	6.5
O	Dallas Ry. & Term.	10	1.40	14.0	Dec.	1.39	2.27	D39	7.2
O	Duluth Sup. Trans.	9	1.00	11.0	Dec.	.44	2.75	D84	—
O	Los Angeles Transit	5	.50	10.0	Dec.	.93	.87	7	5.4
S	Nat'l. City Lines	9	1.00	11.1	Dec.	1.97	1.57	25	4.1
O	Phila. Transit	5	—	—	Dec.	1.03	.31	232	4.9
O	Rochester Transit	3	—	—	—	—	—	—	—
O	St. Louis Pub. Ser. A	5	.50	10.0	Dec.	.48	.70	D31	10.4
O	Syracuse Transit	17	2.00	11.8	Dec.	.62	1.40	D13	—
O	United Transit	2¼	—	—	Dec.	.55	.13	246	4.5
	Averages			10.6%					6.6
Water Companies									
Holding Companies									
S	Amer. Water Works	11	$ .60	5.5%	Mar.	$ .82	$ .88	D7%	13.4
O	N. Y. Water Service	121	2.00	1.7	Mar.	8.22	5.95	38	14.7
Operating Companies									
O	Bridgeport Hydraulic	32	$1.60	5.0%	Dec.	$1.62*	$1.65*	D2%	19.8
O	Calif. Water Serv.	31	2.00	6.5	Apr.	2.42	2.26	7	12.8
O	Elizabethtown Water	105	6.00	5.7	Dec.	6.89	7.33	D6	15.2
S	Hackensack Water	34	1.70+ 25% Stk.	5.0	Dec.	3.35	2.79	20	10.1
O	Indianapolis Water	18	.80	3.9	Dec.	1.33	1.42	D6	13.5
O	Jamaica Water Supply	23	1.50	6.5	Mar.	1.75	1.02	72	13.1
O	Middlesex Water	56	3.00	5.4	Dec.	4.87	4.94	D2	11.5
O	New Haven Water	61	3.00	4.9	Dec.	3.45	3.61	D4	17.7
O	Ohio Water Serv.	21	1.50	7.1	Mar.	1.65	2.23	D26	12.7
O	Phila. & Sub. Water	25	.80	3.2	Dec.	3.01	2.70	11	8.3
O	Plainfield Union Wt.	71	4.00	5.6	Dec.	5.09	5.02	1	13.9
O	San Jose Water	33	2.00	6.1	Apr.	2.78	2.69	4	11.9
O	Scranton-Spring Brook	14	.70	5.0	Dec.	.85	.87	D2	16.5
O	Southern Cal. Water	47	3.25	6.9	Dec.	4.08	4.13	D1	11.5
O	Stamford Water	56	2.00	3.6	Dec.	2.35	2.21	6	23.8
O	West Va. Water Serv.	18	1.20	6.7	Mar.	1.41*	1.38*	2	12.8
	Averages			5.4%					14.1

D—Deficit. E—Estimated. C—Curb Exchange. O—Over-counter or out-of-town exchange. S—New York Stock Exchange. *Based on average number of shares outstanding. # In order to facilitate comparisons, earnings are calculated on present number of shares outstanding. (a) Stock dividend of 50 per cent payable July 1st, and cash of 10 cents payable same date (on new stock) 25 cents paid in 1949. (b) Plus 35 per cent stock in 1949.

What Others Think

Roundup of EEI Convention Speakers

THE speakers' program of the eighteenth annual convention of the Edison Electric Institute, held recently in Atlantic City, included addresses by leaders in the educational field and allied industries as well as by utility executives.

Curtis E. Calder, chairman of the board, Electric Bond and Share Company, Ebasco Services Incorporated, told delegates to the convention that America will still be free in the future, although "an America differing from the one we used to know," and the nation "will run on electricity."

Calder suggested that "new ideas, new wants, new aspirations, and new standards" are bringing "inevitable changes" in America. The speaker dealt with the threat of Socialism and reminded his listeners that in other "crises and periods of crucial decision, our people have chosen and chosen well. Each time our freedom has been preserved and our country has been strengthened."

The utility executive stated that electricity will have an increasingly vital rôle in the America of the future, and the electric utility of tomorrow must adjust itself to meet the great changes that have taken place, and build for those that are in prospect. He added that our economic structure will not long tolerate a misfit.

Calder recalled that the "still youthful" electric industry has accomplished "one of the miracles of America," since its beginning about seventy years ago. The electric companies "have more than doubled their generation of electricity every decade," except during the depression, which took fourteen years.

"Right now this nation is using more than 300 billion kilowatt hours of electricity a year," the utility man said, "almost as much as the rest of the world put together." There is an "undeveloped market twice as large as present sales to ultimate consumers in America," he asserted.

THE electric company that will supply the power for electrical living in the future will be much larger than it is today, Calder said. "The business will remain local and will tend more and more to identify itself with local interests. Its directors will be local people; it will sell stock and borrow money locally to an increasing extent." With most companies still extending their service lines, "the utility of tomorrow will serve somewhat larger areas than it does now."

Calder pointed out that executive organizations will be more extensive and stronger in itemizing specific characteristics of tomorrow's electric company, and "employee relations should be even better than they are now." "System planning," to include every economic and physical phase of property and operations, will be followed by most companies to achieve "tighter operation and greater economies."

On the subject of rates, the speaker noted that the industry can continue its good record in the future, if inflation does not move ahead too rapidly. "Electricity will become a still better bargain than it is today." In addition, he anticipated important technical advances in distribution, transmission, and generating stations, and commented that "the practical large-scale use of atomic energy in power production probably still lies a good many years ahead."

Calder concluded that the future of the electric industry is largely contingent on bringing to an end "the ruinous conflict between the Federal government and the electric companies on a sound Ameri-

can basis." In saving the industry from the "threats which endanger its future," he declared, "we will be doing our part to turn aside the wave of Socialism and like 'isms' sweeping the world."

RALPH J. CORDINER, executive vice president of the General Electric Company, told his convention audience that although industry is in "an age of specialization," made necessary by the "accumulating mass of modern technology," there is an urgent need for "plenty of men with broad perspective, men who will not be frightened at the scope of the over-all job."

Cordiner emphasized that we cannot get along without the specialist "unless we want to go back to the simple days of the horse and buggy when there could be such a thing as a Jack-of-all-trades." He added:

> But we cannot govern industry today with nothing but a group of specialists at the top unless we are prepared to call a committee meeting every time there is a management decision to be made.

The General Electric executive declared that it is literally true of many of today's managers that they know how to run their businesses because they made them what they are today. With the present tendency to stress specialization, "after a splendid job of recruiting and early indoctrination," industry assigns its promising talent to a department and leaves them there for perhaps ten years, concerned with the day-to-day problems of their specialized assignments. As a result, Cordiner stated, "We find ourselves saying 'We'd like to promote a man from within the ranks, but none of them have the proper qualifications.'"

THE speaker stated that the need to fill more and more managerial posts is a continuing problem with all business. He said that there are two ways in which a man who would otherwise gain only specialized experience can be given the opportunity to acquire the broader background required of a manager. One method is regular rotation on jobs in different phases of the operation. But he warned that "along with the rotational training, the candidate must acquire the ability to delegate authority."

The second method is "creation of additional assistant managerial jobs." He pointed out that a man in an "assistant to" position should be made to realize that his job is an over-all one. He stated:

> He must know how to select people and organize their efforts by defining responsibility, authority, and accountability; he must be understanding of human problems; and, above all, he must be sensitive to social, economic, and political trends.

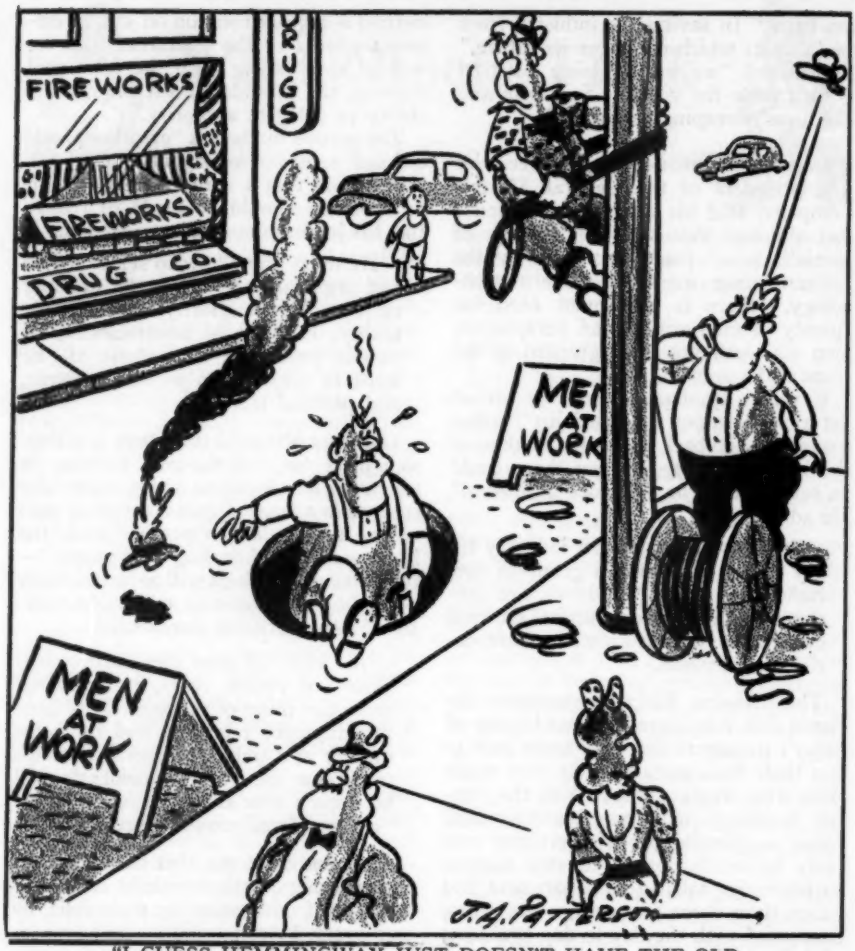
Cordiner also said that there is a definite place for "off-the-job" training in executive development, citing university courses in advanced management as providing a "broader perspective" and "the latest concepts of dealing with people"—two attributes "which will be increasingly needed by the executive talent of tomorrow." Mr. Cordiner commented:

> We have all seen the shifting emphasis of recent years, commanding more and more of the executives' time for employee relations, and for community and public relations. Perhaps tomorrow the greatest emphasis will be upon a new skill. We might call it "congressional committee relations."

He went on to say that unless the industry brings forth the skills needed to make itself understood by the public, by employees, by communities, and by congressional committees, it must be prepared to yield the floor to "those who express themselves more readily, if less accurately."

JAMES E. MCCARTHY, dean of Notre Dame's College of Commerce, called for a new offensive against the forces of Statism. He urged American business leaders to assume their economic and political responsibilities to turn back the tide of government intervention in the field of business.

He charged that "the reds, the pinks,



"I GUESS HEMMINGWAY JUST DOESN'T HAVE THE OLD FOURTH OF JULY SPIRIT!"

the fellow travelers, and the out-and-out Communists" have enjoyed a monopoly on propaganda, and went on to say that "American business, the custodian of the American system of free enterprise, has not been sufficiently vocal, it has not been sufficiently aggressive, it has not made the fullest use of the resources at its command." Dean McCarthy said:

Business has made the tactical error of being *against* totalitarianism first and *for* private enterprise second. It has permitted itself to be jockeyed into a position where it is definitely on the defensive.

The speaker then advised management's active participation in politics as an important rôle in the offensive against Statism. He added:

If we accept the premise that government has stepped out of its proper

rôle as arbiter and has usurped the improper rôle of master, then not only business, but each and every one of the beneficiaries of the American tradition of government must combat this heresy openly, actively, and intelligently.

The educator pointed out that it is not enough for management to take the purely negative attitude that the free enterprise system is not inherently evil. He stated that American business leaders must vigorously propagate the thesis that the American system is inherently good.

DEAN McCarthy stated that the job of the American business leader is to reëstablish public confidence in the integrity, capacity, and ability of American private enterprise. "He must dispel the fog of suspicion in which he has been forced to operate for the past fifteen or twenty years."

The speaker declared:

> We can defeat the highly organized, highly financed economic illiteracy in our country when we, as good propagandists, begin making definite and positive declarations of business policy which the American people will understand. And despite the misunderstandings and grievances that seem to characterize our economy, American business still possesses the leadership and talents and standards and conscience and imagination to restore it to the position it has traditionally held.

A PROGRAM providing for the "free two-way flow" of information between an electric company's top executives and all other employees was outlined by W. E. Wood, executive vice president of Virginia Electric & Power Company.

Wood said:

> There can be no doubt that our employees generally are eagerly espousing the cause of free enterprise; are actively engaged in doing what they can to oppose socialization of our industry; are rendering a more courteous service to the public; are "pulling" for the company and are rapidly becoming happier and more contented. We know no way to measure the improvement in operating efficiency which is achieved, but it must be considerable.

THE information program was set in operation in October, 1949, for Virginia Electric's 4,000 nonsupervisory employees. As it now functions the program is administered by chief management executives and consists of monthly meetings for some forty top officers and managers; bimonthly meetings for some 450 management employees, divided into groups of twenty; and regular bimonthly meetings for the nonsupervisory employees in similar groups.

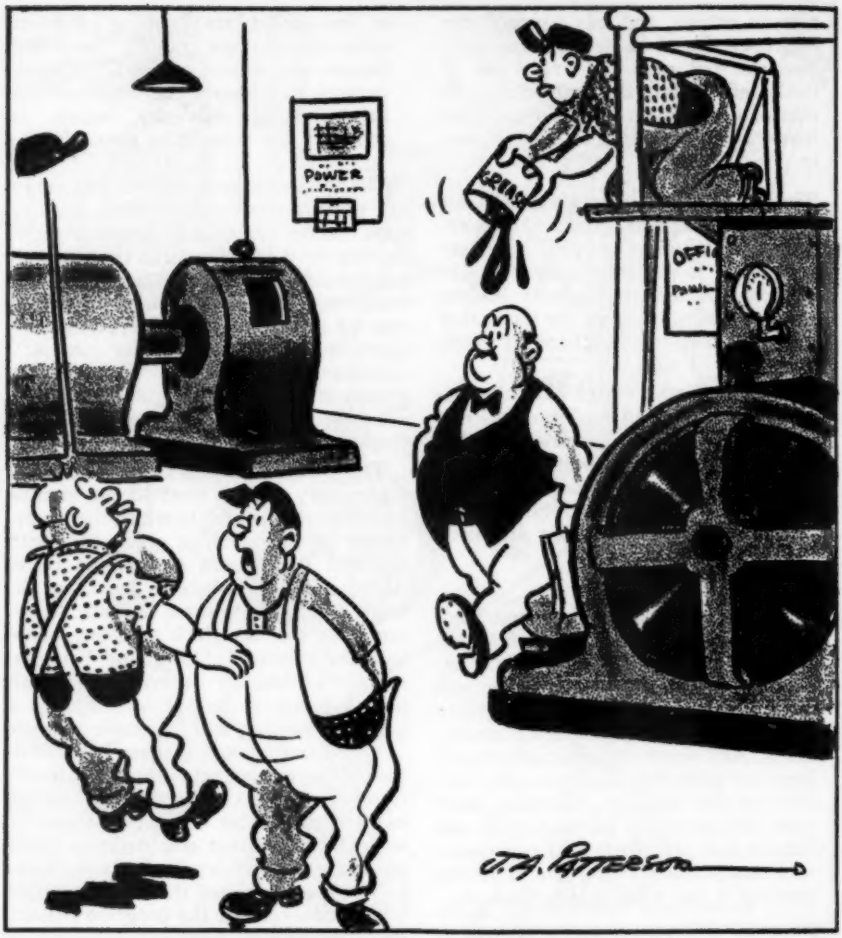
The executive explained that the "nonsupervisory groups meet in the months following the months in which the supervisory group meetings are held," with qualified supervisors to conduct them. All meetings, at whatever level, are divided roughly into three periods: "Current Events," in which company problems are discussed; "Outlines," concerning the philosophy on which the company's policy is based; and, finally, a question, answer, and suggestion period.

Wood commented that an initial attitude of "how can I get more and do less?" changed quickly. Great interest developed early in the matter of public ownership, with the result that employees are now out in the field talking for free enterprise.

The speaker stated that the executives who actively direct the program embark on a "pilgrimage" each spring to each of the company's eleven districts for general employee meetings. He added:

> I cannot overemphasize the importance of top executives meeting at least once a year face to face with all employees for a frank discussion of whatever is on their minds."

Wood indicated that union reaction to the program has been cordial, and that the company's latest but "by no means easy negotiations" were conducted with "a marked absence of unfriendliness and bad humor."



"I UNDERSTAND MULLIGAN IS QUITTING TODAY!"

FRED A. COMPTON, vice president, Detroit Edison Company, in an address entitled "The Effect of Merchandising Programs on the Load Curve," declared that the electric range and the television set have become two of the most important residential load-building appliances for the electric light and power industry.

Compton said that a survey conducted by Detroit Edison Company revealed that home owners of electric ranges led all others in the use of electric household appliances. He noted that the importance of the range load is given further emphasis by the fact that revenue from range load can represent as much as 13 per cent of a utility's residential revenue.

The speaker remarked that television, too, occupies an important position on the load curve. Its value lies principally in its tendency to level off the valleys that appear on the load curve on either side of the 6 PM peak.

Compton went on to urge utilities to

develop residential load-balancing programs through the intelligent promotion of home electric appliances.

HERBERT W. VOORHEES, president of the New Jersey Farm Bureau and director of the American Farm Bureau Federation of Trenton, New Jersey, asked electric utility "support in obtaining a farm program that is consistent with a dynamic, free choice economy," and criticized the government's Brannan Farm Plan as an "obvious fallacy."

Voorhees praised the electric industry for its major rôle "in bringing the American farmer his present higher standard of living."

He stated that the industry has every right to be proud as one that is most highly productive. He pointed to the Farm Electrification Council of New Jersey which, with the coöperation of the state's Department of Agriculture and electric companies, has increased electric service from 44.2 per cent to 97.9 per cent of the farms in the state, over the past twenty-five years.

On the subject of the Brannan Plan, Mr. Voorhees declared that the farmer, not the government, should decide production and marketing questions.

He attacked the basic goal of the plan, that of setting up what he termed an "income standard." He contended that greater government control would result. Although farmers are told that the U. S. Treasury would pay the difference between the market price and the income standard, he declared that the "consumer pays the entire cost, together with administration expenses."

Voorhees pointed to the outlook of the New Jersey Farm Bureau organization, emphasizing that it was vastly different from the government view of farm production. He stated that the bureau considers farm price support programs as "insurance" against down trends in prices, not as a method of government guaranties of profitable prices.

Mr. Voorhees admitted that the Farm Bureau view was conservative on some points. He maintained, however, that America is at a point in its development —after "two destructive wars"—where a "discriminating conservatism is of the utmost value."

KENT LEAVITT, past president of the National Association of Soil Conservation Districts, called for vigorous support by private electric companies of the water resources development program of the soil conservation districts.

Because of the intimate relationship between the proper use and development of water resources and soil conservation, Leavitt urged the private power companies of the nation to recognize their stake in the sound development and use of the nation's soil and water resources. He added:

> America's water policy has been neither logical nor unified. We have attempted to control our rivers from the bottom up by means of great structures, rather than from the top down with more simple proper land-use practices. Great dams have been built at fantastic expense with little thought given to the control of the watershed and its silt-producing ability. Many great dams have incorporated in them expensive silt-retaining areas, yet this silt might never have reached the dam area if a portion of the money had been spent on watershed protection.

Leavitt declared that the most effective instruments for fulfilling an intelligent land and water resources development program are the more than 2,200 soil conservation districts, whose boundaries include more than three-fourths of the agricultural and ranch lands of the country. Each district is an organization composed of private citizens who coördinate the efforts of every agency—Federal, state, or private—which has an interest in proper land use. He stated that these districts would welcome the support and assistance of the private electric companies of the nation in fulfilling their program. The speaker remarked:

> We must, as a nation, change our thinking about the ownership of land from one of ownership in fee simple

to one of trusteeship. We must develop and improve through research work the science of Proper Land Use, and then we must get this science applied to every acre in America without changing our form of government.

G. W. EVANS, vice president and general manager of the Kansas Gas & Electric Company, in developing his theme "The Selling Job Ahead," told the convention that any broad program of growth within the electric utility industry cannot be effective until "top management" becomes "vitally and actively" interested in the work of the sales department.

Evans added that this sales-mindedness of management must also seep down to all employees, in all departments. He said they must realize that the sales department is "not a necessary evil but is really worth while."

Selling was generally overlooked in the rush of postwar plant expansion and the raising of equity capital to finance it, Mr. Evans observed. The continuing increase in power loads, he stated, had led some utility industry people to a "fallacious belief" in the theory of "gravity sales" due to a natural multiplication in demand.

The speaker declared that the aims of the sales departments must include the retention of all present business, the building of new business, encouragement of full use of electricity, and development of the rural market as well as school and municipal lighting. He added that industrial development, such as helping firms use electricity more efficiently, is also a vital necessity.

Evans emphasized that the "full use" customer is the friendly customer, and urged that the most important thing a sales department can do is to "create good will and a friendly understanding spirit among our customers."

WALTER GEIST, president of the Allis-Chalmers Manufacturing Company, declared that American business has proved to be the greatest salesman in the world of products and services, and the "lousiest" salesman of abstract ideas.

He accused business of rapid physical growth, but retarded development of employee and community relations. Mr. Geist then offered his solution:

> Right now, I'd like all business to join with me in a pledge to develop a greater awareness of humanitarian problems. A pledge to aid in reaching a solution to these problems. And, finally, a pledge to let the American people know what industry is doing about these humanitarian problems.

Geist emphasized that American business life, in order to succeed, must be merchandised. He added that its goals and ideals must be presented to a public in understanding terms, in the same way that products and services have been merchandised through the years.

The industrialist accused business of spending millions researching customer wants, while neglecting its most important customers—"our own employees." He remarked that business must know its employees as well as it knows its products if the "trend toward Socialism" is to be halted. He contended that industry attention to humanitarian problems should be the "front line" of its attack against Socialism.

Although some companies already have embarked on humanitarian relations, Geist stated that "even these companies have been hiding their light under a bushel basket," and he called for a greater outlay of time, effort, and money to advance the pledge to humanitarianism. He added:

> Your efforts in this field will result in many rewards. You will find an enlightened employer-employee relationship. You will bring about a better community reputation for the company. You will strengthen your stockholder relationships. Most important, you will strengthen our own free enterprise economy.

GEORGE H. LOVE, president of the Pittsburgh Consolidation Coal Company, told the 3,000 utility industry

executives at the closing session of their 3-day convention at Atlantic City that he was particularly concerned over the foreign oil that is "flooding some of our natural coal markets at dumped prices." He said the present monthly rate of imports (about 27,000,000 barrels, according to a coal industry representative) is about 70 per cent greater than it was in 1946 and about 50 per cent greater than a year ago.

"Some 25,000 miners lose a day's work every day oil pours in at the present rate," he declared. "If a utility substitutes imported fuel oil for 3,000,000 tons of annual coal consumption, 2,000 miners and at least 1,600 railroad workers are put out of work.

"Is it good to do all this so that some sheik in the Near East or a South American government may collect a few million dollars more in royalties?" he asked.

He reminded his audience in Convention Hall that the utilities, which spend $600,000,000 a year for coal, would have to spend that amount in capital outlay to provide their own mining facilities. In this connection, Edison Electric Institute statistics show that the power and light industry used 84,000,000 tons of coal last year compared with 100,000,000 in 1948.

Mr. Love said three major problems confront the coal companies. The first of these is labor. On this score, he remarked that the industry will prosper if it accomplishes its goal of no strikes, and that a permanent organization in the coal industry is being set up now toward that end. He asked the utilities to help financially in this effort, but he did not explain what part the power companies would play.

DISCUSSING the second problem, competition with other fuels, he said that present production is about 500,000,000 tons a year, compared with a peak of 630,000,000 three years ago. Then he struck the only bright note in his speech by saying that if competition is restricted to domestic fuels the coal market would expand. He envisioned a demand for 650,000,000 tons a year by 1965. In arriving at the latter figure he also saw a 30 per cent increase in the use of oil and a 60 per cent rise in the rate of natural gas consumption within the next fifteen years.

On the income side of the picture, Mr. Love said, earnings of the coal industry permitted prices for the fuel to be reduced about 10 per cent in the last year and a half "in spite of the recent increase in costs resulting from the last contract with the miners' union."

On the matter of competition within the industry, the third problem, the coal official said there is a current market for about 450,000,000 tons of bituminous coal a year, but because of the seasonal nature of the business there should be a capacity of at least 500,000,000 tons.

The fast-spreading web of natural gas transmission lines throughout the nation, plus the rapid dieselization program of the railroads, point to a drab future for the coal industry, but Mr. Love saw a way for the coal and utility industries to work out mutually beneficial contracts. "For a year or two you may have to pay a little more for coal, but in the end you will get this back many times over if we are successful in keeping this industry out of government hands," he said.

"DOUBTLESS *it is as a general rule preferable to have a government than not to have a government. The experience of France merely shows that people can go on for a while without one. If they can do so for two weeks, they probably could survive for four weeks or four months.*

"We think the paternalists in Washington, who appear to believe that no American is capable of so much as brushing his teeth without the assistance of the Federal government, should contemplate this anomaly."

—EDITORIAL STATEMENT,
The Wall Street Journal.

The March of Events

In General

Scoffs at Silt Threat to Hoover Dam

SECRETARY of the Interior Oscar L. Chapman, in a special report released last month, declared that "new and dramatic scientific research" shows that the Hoover dam has a useful life expectancy of at least 275 more years.

Scoffing at "prophets of doom" who maintain that Lake Mead behind Hoover dam would be filled with silt and rocks within fifty to seventy-five years, Chapman declared that combined Geological Survey-Navy Department tests belie these predictions.

Chapman said the Colorado river carries thousands of tons of mud into Lake Mead daily, but that the annual total of 105,000 acre-feet of silt is gradually being lowered by soil conservation and construction of new dams above the lake on the Colorado and Green rivers.

Giving Lake Mead's storage capacity as 31,142,000 acre-feet, Chapman said that at the present rate "it would take until the year 2380" for the lake to fill up with silt. He added that conservation methods and upstream dams will cut the flow of silt drastically within the next few years.

The Interior Secretary also said a crew of Geological Survey scientists and Navy experts were able to determine the exact amount of silt and rocks brought into the lake by the Colorado river, adding that techniques developed in wartime to locate submarines and sunken ships aided in arriving at the determination.

Junked Warships' Engines Become Power Plants

WORLD WAR II U. S. naval vessels that are slated for the blow torch and junk pile will not go entirely into the scrap steel crucibles of Pittsburgh—their engines will live on in many parts of the world, producing electric power.

Recently, the Diesel engines of an outdated destroyer escort went into emergency service in the polio ward of the County Hospital at Long Beach, California. If other power fails, the Diesel, rebuilt and with new generator, will automatically cut in to keep iron lungs functioning.

At Anchorage, Alaska, the engine of a former LST is providing light and power for the city. In desert areas other naval engines pump water, while in far-off Saudi-Arabia they are hoisting oil over mountains.

Old soldiers never die, according to legend; now we see fighting craft, at least their hearts, serving man after their hulls have surrendered.

Connecticut

Bus Company Gets Fare Boost Approval

THE New England Transportation Company has been granted permission by the state public utilities commission to increase all its bus fares in Connecticut 10 per cent, the new rates to be effective about July 10th.

The company testified that in 1949 it

operated in Connecticut, Massachusetts, and Rhode Island at a profit of $149,375, but that the first quarter of 1950 showed a $54,882 loss for the system and $24,815 in Connecticut. The loss was attributed to decline in passenger traffic and increased operating expenses. The commission found that the increases requested are uniform with those now in force between interstate points served.

Georgia

Antistrike Law Coming

ENACTMENT of a public utility antistrike law is certain to be proposed during the 1951 session of the Georgia legislature. This has been indicated by Governor Herman Talmadge, a candidate for reëlection.

It is believed the proposed law will be patterned after laws already in effect in a number of other states which ban public utility strikes and provide for arbitration of such disputes where mediation and conciliation fail.

A transit strike in Atlanta gave rise to discussion of such legislation, which seems to have the support of a large segment of the public and leading newspapers of the Empire state of the South.

Jesse L. Walton, head of the AFL transit union in Atlanta and also a member of the Georgia House of Representatives, has said that he could go along with "some law that wasn't unbalanced, so long as the law never takes the economic rights away from the working class."

Idaho

Canadian Gas for Idaho

TRANS-NORTHWEST GAS, INC., of Seattle, Washington, has filed application with the Idaho Public Utilities Commission for a permit to bring a gas line into the Gem state.

The application said the company seeks a certificate of convenience and necessity "for the purpose of building trunk and lateral pipelines for transportation of natural gas from the Dominion of Canada into, throughout, and across Idaho."

Officers of the company stated that as yet no route for the line had been definitely established, but that extensive engineering studies are now under way to determine the most economical routes as well as the markets to be served.

Several companies are now bidding for Canadian gas that will be exported to the United States by running pipelines from the fields near Calgary via an all-Canadian route to Vancouver, British Columbia, thence south to the Seattle and Portland areas.

Indiana

Patron-newspaper Coöperation Helps Transit Firm

MORE than half a hundred specific suggestions for better bus and trolley service to the trolley editor of the *Indianapolis News* are under consideration by traffic and service experts of the Indianapolis Railways. Inaugurated several weeks ago, the plan is that patrons of the transit lines write their suggestions to the trolley editor who, after eliminating the purely "crank" communications, passes the remainder to the company for study and consideration.

Indianapolis Railways President W. Marshall Dale said "the letters received

. . . represent a splendid cross section of what the patrons want and will help us materially in meeting our obligation."

Eight predominating rider suggestions now under consideration by the company are: establishment of skip stops; side and rear destination signs on all vehicles; inauguration of "Shoppers' Specials"; institution of a weekly pass system; do not permit schoolchildren to use identification cards after 4 PM; require patrons to exit by the center door; lower fares to attract more revenue; and establish more cross-town lines.

In addition to the letters addressed to the trolley editor, the company has received about 250 direct communications from patrons. These, Mr. Dale said, were mostly complaints about service or clear-cut suggestions for improvement, with a very small number from pranksters or persons with a grudge.

Kentucky

Aides for Public Urged

THE board of directors of the Kentucky Municipal League has urged that the Kentucky Public Service Commission hire experts "to protect the interests of the public" in cases involving requests for utility rate increases.

Meeting recently in Louisville, the board adopted a resolution declaring that the cities of Kentucky cannot afford to hire experts needed to see "that the public may be as well represented as the utilities." It added that the PSC "is by statute charged with the duty of protecting the public from exorbitant charges by utilities holding monopolies in their respective fields."

An immediate statewide problem is presented "by the fact that the Southern Bell Telephone & Telegraph Company is presently seeking a fourth increase in four years," the resolution asserted, asking that if the PSC has no funds to hire the necessary experts, the governor provide the money "from any contingent or emergency funds under his control."

Application for Gas Rate Increase Denied

THE public service commission has denied an application of the Louisville Gas & Electric Company for higher rates for natural gas supplied to its customers since June 1st.

The commission ruled that the company had failed to show that higher rates were necessary to produce a fair return on its rate base. The company's proposal to supply straight natural gas instead of mixed gas was approved by the commission on May 24th, but action had been postponed on the proposed rate increase.

It was held by the commission that the company was unable to sustain its contention that the proposed new rates would not cause the customer to pay more for the amount of heat obtained from natural gas than had been paid for mixed gas.

Maryland

BTC Appeals Denial of Fare Increase

THE Baltimore Transit Company has appealed its proposed fare increase to the Maryland Court of Appeals. This action followed a Baltimore City Circuit Court's action in upholding a May 25th decision of the Maryland Public Service Commission, denying the company's fare increase application.

The company seeks to increase bus-trolley fares from two tokens for 25 cents to a straight 15 cents.

In announcing the appeal, BTC President August B. Haneke said the board of directors noted with consider-

able concern the company's continued deficit operation.

The deficit for May, after allowing for debenture interest, amounted to $95,087 against net income of $20,331 for May of last year. For the five months there was a loss of $718,186 against net income of $2,008 in the same period of 1949.

New York

Wage Boost Brings Fare Hike

FARES on city-owned busses in greater New York city were raised from 7 to 10 cents on July 1st, and the 12-cent bus-subway fare was jumped to 15 cents, in order that the municipal transit system may offset a basic hourly wage increase from $1.44 to $1.55.

The fare hike is expected to add $15,000,000 a year to city transit revenues, while it is estimated that the upped wages will cost $13,188,515 a year.

North Carolina

New Duke Plant Goes into Service

THE Duke Power Company has put into service its new 140,000-kilowatt steam plant on the Dan river, near Draper, North Carolina, about 40 miles north of Winston-Salem.

The Draper plant, costing $15,000,000, is the second of three stations Duke is building in a $100,000,000 5-year expansion program. The first plant went into operation in 1948 near Selby, North Carolina, and the third is to be built near Pelzer, South Carolina.

Pennsylvania

PP&L Dedicates New Sunbury Station

PENNSYLVANIA POWER & LIGHT COMPANY's new Sunbury steam-electric station, the world's largest anthracite-fired power plant, was dedicated June 21st to "the service of our customers; to the greater progress of the commonwealth of Pennsylvania, and to the material welfare and security of the United States" in ceremonies conducted on the 259-acre plant site at Shamokin dam, three miles below the city of Sunbury and on the west bank of the Susquehanna river.

Nearly 350 guests, among them central eastern Pennsylvania business and civic leaders and officials of the utilities and associated industries, heard Harold E. Stassen, president of the University of Pennsylvania, and Charles E. Oakes, the PP&L chief executive, as speakers for the formal occasion.

Mr. Oakes, after a brief review of the history of the Sunbury project, traced the utility's rapid growth since its incorporation in 1920. Comparing 1920 with today, he said that, in the 30-year period, the population of the service area had grown from 700,000 to more than one and three-fourths million; the customers had increased from 78,000 to 558,000; the employees from 1,400 to nearly 7,000; payrolls from a little over $2,000,000 to $24,600,000; revenues from about $7,500,000 to $70,000,000; and stockholders from 1,079 to nearly 70,000.

These impressive figures, Mr. Oakes continued, are a "glowing testimonial" to the enterprise of central eastern Pennsylvania people and their determination to improve the living standards of their families and to enhance the material prosperity of their communities. The economic progress and the better-

ment of the living conditions of the people of the area are mirrored in the growth and record of achievement of the company, he added.

The new plant, incorporating all of the latest features in modern steam-electric station design and practices, will operate primarily on anthracite, consuming 2,000 tons daily in normal operation. Small quantities of bituminous will be injected when the anthracite is unusually wet to make it burn more readily. However, the plant is designed to operate entirely on bituminous if conditions should so demand. It is within easy access to both anthracite and bituminous fields.

Although installed generating capacity is now 150,000 kilowatts, work is already under way on a 100,000-kilowatt addition scheduled for completion in 1951. Foundations for the building and for the turbine-generator have been completed and the steel structure is nearing completion.

The company's expenditures for construction and acquisition of new properties for the postwar period have now reached $115,000,000. By the end of 1952, PP&L's postwar expansion program will have reached $165,000,000, of which the Sunbury plant will be the largest single item. At the same time, big expenditures are being made to reinforce and expand the company's transmission and distributing facilities.

Mr. Oakes said that this expansion has been made possible largely through the faith and coöperation of thousands of individual investors, more than two-thirds of whom are Pennsylvania residents.

High lights of the physical aspects of the Sunbury plant include nine miles of railroad trackage to handle fuel supplies; 432,000 cubic feet of air per minute, heated to 500 degrees by the stack discharge, is required to keep furnace fires going; nearly two miles of rubber belting conveyors are required to handle 600 tons of fuel per hour; 3,000,000 bricks, enough for 200 homes, were used in construction; fireless locomotives, operating on stored steam from the plant, haul fuel and other supplies in the plant area; the twin turbine generators cost $1,250,000 each; over 135,000,000 gallons of water are required every twenty-four hours—about equal to the daily requirement of Washington, D. C.

Broad, well-lighted highways offer easy access to working areas, and adequate parking space for employees' and visitors' cars is available in convenient lots. Landscaping is the final touch that turns this model plant into an attractive community neighbor.

Wisconsin

REA Co-öp Ordered to Hike Wages

WISCONSIN'S largest rural electric coöperative, the Dairyland Power Coöperative, serving more than 65,000 farmers, will have to give its employees wage increases.

An arbitration board, set up under the state utility antistrike law, recently ordered the coöperative to give 150 workers $12 monthly increases, plus $8.65 premium payments to workers on rotating 24-hour-a-day shifts. The workers are members of the (AFL) International Brotherhood of Electrical Workers.

The pay raise ordered is retroactive to January 1, 1950, but the co-op will have until August 1st to pay the employees. Arbitration of the wage dispute started March 23rd.

The co-op argued that it should have special treatment in the case on the grounds that it was serving farmers in rural areas where private utilities refused to expand.

However, the arbitrators said "wages, like materials, are a cost of doing business, and Dairyland must pay the fair market cost."

The action marked the first time the Dairyland system as a whole has been forced to submit to arbitration to settle its labor troubles.

Progress of Regulation

Industrial Purchasers of Natural Gas under Contract Do Not Profit from Order Directing Refund

THE United States Court of Appeals approved a plan for distribution of excess charges collected by an interstate supplier of natural gas from pipe-line companies. The plan had been worked out by one of the pipe-line companies in consultation with the Federal Power Commission and was in substantial compliance with the opinion of the Supreme Court, which reversed an earlier distribution order of the United States Court of Appeals. (Federal Power Commission *v.* Interstate Nat. Gas Co. [1949] 336 US 577, 79 PUR NS 45.)

The plan proposed distribution to utilities for redistribution to their customers of all excess charges on sales by the pipeline to the utilities which were not already returned in lower rates.

The principal objection to the plan came from industrial customers and from the Illinois commission. The plan provided that excess charges of almost a million dollars attributable to gas sold by the pipe-line company to these customers under private contract should be refunded to the pipeline and retained by it.

The industrial consumers and the Illinois commission took the position that the pipe-line company could not in any event retain for itself any excess sums collected from it and that it was the duty of the court to order these sums distributed to the ultimate consumers, private industrial and public utility alike. They contended that under the Supreme Court opinion such distribution was mandatory.

Their secondary position was that the Illinois commission had regulatory powers over the pipeline not only as to rates to be charged utilities but industrial customers as well and that under its power it could and would award reparation to these customers.

The court found no basis in the opinion of the Supreme Court for the contention that in no event could the money be distributed to the pipeline. On the contrary, the court continued, there was a presumption that these moneys were the property of the pipe-line company unless superior claims were shown.

There is no basis, the court said, in contract or in equity for ordering the pipeline to refund to direct industrial customers any money collected from them. The court used these words in disposing of the contract argument:

> Valid when made, and remaining valid and binding throughout, unaffected by the Federal rate proceedings and the rate order made by a commission, neither asserting nor having jurisdiction over prices paid or to be paid by them under the contract, they were the fruit of private and arm's-length negotiations under the compelling pressures of other competing fuels.

The court also ruled that there was no ground for a finding that the pipeline

would be unjustly enriched at the expense of the industrial consumers if it were permitted to retain the refunds on sales to them. The court reasoned:

> This is so because Mississippi (pipeline) collected from them only what, dealing at arm's length and in a market where prices are fixed by costs of competing fuels, they had voluntarily agreed to pay. It is so, too, because if this court, on the theory of unjust enrichment to Mississippi by returning to it its own money which it had paid out, were to order these moneys paid over to the industrial customers, it would then, on the same principle, have to order them in turn to pay them over to the contract consumers of their goods, and so on, *ad infinitum*.

As to the argument of the Illinois commission, the court replied that the commission as constituted up to February, 1950, had decided to refrain from any action in the matter because the direct sale contracts were "specially negotiated sales and not utility operations." It was only since the personnel of the commission changed that the industrial purchasers received commission support. In these circumstances it could not be found that speedy state remedies were available or that the industrial purchasers under local law were entitled to refund.

Finally, the court ruled that the utilities' costs of making refunds to their customers should be borne by the interstate supplier of gas and not by the pipeline or the utility. *Interstate Nat. Gas Co., Inc. v. Federal Power Commission et al. (No. 10701).*

Regulated Monopoly in Passenger Carrier Field Favored

THE Massachusetts Department of Public Utilities authorized the Metropolitan Transit Authority to carry passengers over a route served by another motor carrier so as to connect with its main system. This extension gave the people living in the area a direct connection with the entire Transit Authority system for a single fare. Most travel on the existing motor carrier's line originated on the other system. Consequently, the people had been required to pay an extra fare. The new setup enabled the people to take advantage of a universal transfer system whereby the fare for one continuous ride would never exceed 15 cents.

It was stated that the policy of the department, ever since the inception of regulation of transportation agencies, has been to prevent competition as between carriers so far as possible. The department held that public welfare is best served by a regulated monopoly in the field of passenger transportation as well as in the other fields of public utility operations. Evidence which required the department to find that it was in the public interest to extend the Transit Authority's service also required it to find that public convenience and necessity did not exist for the operation by the existing carrier over the same route. Consequently, the department revoked its certificate.

Commissioner Whouley, in a dissenting opinion, stated that it did not seem just to expect the other patrons of the Metropolitan Transit Authority system to support this extension on the basis of a 15-cent fare when evidence proved conclusively that the cost of service over this proposed extension could not possibly be met by that rate. Furthermore, he pointed out that the granting of the petition would have the effect of putting the existing company out of business in the area involved. While that of itself might not be the controlling consideration, he said, he did believe it to be an important one, especially in view of the fact that the company had served the area well for over a quarter of a century.

Commissioner Whouley pointed out that many transportation services connecting with the system of the Metropolitan Transit Authority have been built up over a period of years. From time to

time the Transit Authority might wish to extend its system.

He posed the question whether these companies should be wantonly put out of business without any compensation whenever the authority might wish to extend its system into the area served by them, without regard to whether or not such extensions might prove to be profitably operated on the basis of the single fare presently charged by the authority. He concluded that the precedent which the majority decision established was unjust and unsound. *Re Metropolitan Transit Authority (DPU 8470-A, DPU 8852).*

Resulting Economies Basis for Sale of Electric Subsidiary To Another Electric Company

THE Securities and Exchange Commission approved the proposed sale by General Public Utilities Corporation to Consolidated Edison Company of New York of all of the common stock of Staten Island Edison Corporation. Substantial economies could result. Centralized purchasing and accounting operations would obviate the need for a new office building planned by the company being acquired. Any resulting reduction in the number of employees would require no dismissals because displaced personnel could easily be absorbed by the turnover in Consolidated's system.

Combined operations would produce substantial savings on a system-wide basis. But this brought up the question, whether the acquisition would result in a combination so large as to impair the advantages of localized management, efficient operation, and the effectiveness of regulation. Would it tend toward interlocking relations or concentration of control to an extent detrimental to the public interest or the interest of investors or consumers?

In view of the relatively small size of the company being acquired and the fact that all of its operations were within the city limits of New York, where the purchasing company also operated, the commission refused to make any adverse findings. It believed that the acquisition would serve the public interest by tending toward the economical and efficient development of an integrated public utility system.

The purchase price was 13.2 times adjusted earnings for the past twelve months. On the basis of the current year's estimated earnings the price was 12.2 times such earnings. The indicated dividend would amount to a yield of 6.06 per cent. The commission believed this price to be reasonable. *Re General Public Utilities Corp. et al. (File Nos. 70-2295, 70-2331, Release No. 9782).*

Stockholders Entitled to Dividends Declared after Court Approval of Holding Company Dissolution

THE United States Court of Appeals affirmed a district court ruling that stockholders receiving stock of a subsidiary of a holding company in exchange for stock of another subsidiary being dissolved pursuant to a holding company simplification plan were entitled to dividends on the allocated stock declared during the interval between district court approval of the plan and its final effectuation. The plan provided, among other things, for the retirement of the dissolving subsidiary's publicly held common stock by distribution of .3 of a share of common stock of another subsidiary in exchange.

It was observed that a district court may not rewrite or modify a holding company simplification plan as approved by the Securities and Exchange Commission, although it may make orders appropriate to carrying out the plan. It was claimed that the court, in allocating the dividends to the publicly held common

shares, modified the plan which the commission had approved. This argument was rejected on the ground that the order of the district court was strictly within the framework of the simplification plan.

The commission did not care who got the dividends. It took the position that the plan was fair and equitable either way and that the district court's order was not a modification of the plan. The court of appeals held that the district judge was correct although the commission had made no orders specifically referring to the dividends.

The court pointed out that the commission, in approving the plan, apparently had considered the dividend prospects of the stock being received by the stockholders of the subsidiary being dissolved as a factor that made the plan a fair one. It said that the shares were specifically allocated under the plan to the shareholders and they were entitled "to the fruit as well as the tree."

Judge Hastie, in a separate concurring opinion, agreed that the order of the district court should be affirmed but was unable to agree that judicial action awarding the dividends in controversy to the public common stockholders amounted to no more than interpretation and enforcement of the approved plan. Nor did he find it helpful to characterize that action as "within the framework of the plan." Once the critical problem of judicial power is solved, he said, he had no doubt that the award of the dividends to the public common stockholders was equitable and should be approved. *Re North American Light & Power Co. 180 F2d 975.*

Tariff Rates Lower Than Contract Rates Available to Contract Holder

THE supreme court of California reversed and remanded a commission order denying reparation to cement companies which had a rate contract with an electric company. The contract contained an escalator clause providing that whenever the market price of fuel oil should exceed a certain amount, the charge for electricity should automatically increase proportionately. It also provided that if the power company "shall" at any time place in effect any lower or more advantageous rates, the electric company should likewise make the same rate effective for the contract holder.

Because of a rise in fuel oil prices the electric rates under that fuel adjustment clause became higher than the rates under the company's existing tariffs. The court held that the electric company should have made the lower tariff rate available to the cement companies despite the contract.

The provision that if the power company "shall" place in effect any lower or more advantageous rates, it should make those rates available to the contract holders had been constructed by the commission to mean that the electric company would make available to the contract holders only such lower or more advantageous rates as should in the future be placed in effect. The court observed that the general policy required the utility to afford to the consumer the lowest or most advantageous rate. It pointed out, however, that the purpose of the contract was to obtain a rate lower than the filed tariff. It deemed it unreasonable to assume that the contract holders agreed to pay any rate higher than such existing rate.

The court believed that the purpose of the escalator clause was to protect the utility's cost differential between the lower contract rate and available existing tariffs. It did not believe that the utility should be able to employ that clause to raise charges above existing schedules.

Justice Traynor dissented on the ground that the rise in power prices under the escalator clause did not place in effect lower rates within the meaning of the contract. He was of the opinion that the contract permitted the consumer either to continue the contract in the hope

of a drop in fuel oil prices or to terminate the contract and accept the potential advantages or disadvantages of the tariff rates. To order reparations to the contract holders after expiration of the contract, he believed, would permit the consumers to receive all the benefits of the contract with prices set retroactively as though their power to terminate had been exercised. *Riverside Cement Co. et al. v. Public Utilities Commission, 217 P2d 403.*

Deposition Dispute Discussed in Decision

THE rules as to the acceptability of sworn statements or depositions in place of actual testimony were carefully considered by the Indiana commission in passing on a motor carrier's certificate application. The carrier offered 24 depositions in support of its application. Protesting carriers made objection to the depositions as a whole and specific objections to ones which they considered irregular.

As a general rule, the commission began, a party bringing a proceeding before it may take depositions in the same manner as in court cases. To the objection that the carrier failed to show the continued existence of the cause for taking the sworn statements, the commission answered that no such showing is required where the cause for taking the statement is apparent upon its face. The fact that the witnesses resided at some distance from the place of the trial, making personal appearance impractical, was obvious from the location at which the statements were taken.

The most difficult question presented by the objections involved statements by four persons whose names were not mentioned in the notices that the statements were to be taken. The applicant contended, first, that he served notice verbally just prior to taking the statements and, second, that the objectors' appearance at the hearing at which the statements were taken, together with their examination of the witnesses, amounted to a waiver of any defect in the given notices.

In rejecting applicant's first contention, the commission said "the argument as to verbal notice is too extravagant to be maintained." Notice to take depositions must be given far enough in advance to afford opponents an opportunity to prepare for and travel to the place where the statements are to be taken.

The applicant's position as to the claim of waiver was likewise considered untenable. In the first place, the commission said, there is no statutory authority for waiver of the notice requirement. Furthermore, since in the absence of statute sworn statements would not be permitted to take place of actual testimony, such statements should be excluded where anything required by the statute has been omitted.

As a practical reason for denying the applicant's claim of waiver, the commission stated that only one-half of the objectors to the certificate award appeared and participated in the hearing at which the sworn statements were taken. This could in no degree bind or affect the other protestants.

Lastly, the commission remarked that the admissibility of depositions is guided more by principle than by law. One of the leading principles is that where an omission of a statutory requirement produces any possible injury to the opposite party, a deposition may be excluded. In the matter at hand the commission was not prepared to say that the admission of depositions of persons not named in the notice by the company to take them was harmless.

Depositions of persons incorrectly named or named only by their surname were likewise excluded.

After considering all of the testimony and all of the admissible depositions, the commission concluded that public need for the service had been adequately demonstrated and granted the certificate. *Re Southern Transp. Co. (No. 3548-A, 3).*

Bus Route Changes Authorized to Conform with One-way Street Plan

THE New York commission authorized a transit company to make changes in routes to conform with one-way streets as approved by the city of Buffalo. The commission said it cannot interfere with the determination of city authorities unless it is clear that a change in routes unduly interferes with public convenience and safety.

The changes while less convenient for some people might be more convenient for others. The commission also continued:

> Nor can it be said that the establishment of one-way traffic on a public thoroughfare, upon which is located schools, public playgrounds, and other public buildings, unduly encroaches upon the public safety. Schools in Buffalo and other cities are located upon one-way streets and safety protection, particularly of children, is a matter of police and traffic regulations and controls. It follows, therefore, that under the law this commission must adopt the determination as to traffic routing which is wholly within the discretion of the local authorities. Experience will demonstrate the feasibility and success of the plan and appropriate changes may subsequently be made in the light of practical usage.

Re International Railway Co. (Case 10290).

Municipality Furnishing Extraterritorial Service Subject to Commission Regulation

THE Pennsylvania commission required a municipal water plant to serve an individual outside of corporate limits. A pipeline carrying water to the municipality from its source of supply passes the individual's property. The only construction involved to make this water service available is the installation of a service connection from the pipeline to his property. The municipality claimed that service was denied by reason of its existing ordinance prohibiting the making of connections to the pipeline after the date of the ordinance, to conserve this water for residents of the said municipality.

It was admitted that the municipality does furnish extraterritorial service. The commission held that it had jurisdiction because the municipality had elected to provide service to consumers beyond its corporate limits. The Public Utility Law and the determinations of the commission take precedence over an ordinance prohibiting the tapping of mains between the borough reservoir inside the corporate limits and the source of supply outside the town.

The municipality, after having elected to furnish service beyond its corporate limits, could not unduly discriminate by furnishing service to some and refusing it to others in the same class and similarly situated. *Lentz v. Halifax Borough Water Dept. (Complaint Docket No. 14853).*

Companies Receiving Out-of-state Energy from Federal Dams Are Subject to Federal Power Act

THE Federal Power Commission determined that two electric companies engaged in the sale of electric energy entirely within the state of Arizona are public utilities under § 201(b) of the Federal Power Act and, therefore, must comply with the commission's accounting requirements.

The two companies are not affiliated, but the matters involved and issues pre-

sented were generally interrelated and in many respects identical. Consequently hearings were consolidated. Neither utility appeared. Both notified the commission that their attorney had advised them that the commission lacked jurisdiction over them.

While neither utility owns any lines or plant outside of Arizona, both receive energy from the lines of the United States Bureau of Reclamation. This energy is generated at dams located in California and Nevada and carried into Arizona on lines maintained by the bureau.

The commission pointed out that § 201 (c) of the act provides that "electric energy shall be held to be transmitted in interstate commerce if transmitted from a state and consumed at any point outside thereof." This would require a finding that all the dam-generated energy carried by the bureau into Arizona is in interstate commerce.

The commission did not overlook the fact that the out-of-state energy involved is generated outside of and transmitted into Arizona by an agency of the Federal government. This situation, the commission ruled, is of no consequence in determining whether the continued transmission and subsequent sale of the out-of-state energy, by means of the private companies' facilities, constitute a transmission and sale in interstate commerce by the companies. *Re Arizona Edison Co. et al. (Docket Nos. E-6194, E-6212, Opinion No. 190).*

Continuance of Municipal Plant Service to Suburb Ordered

THE Wisconsin commission ordered a municipal water plant to continue to serve an area beyond city limits, practically surrounded by the city. The water plant serves all the territory within the city limits as well as certain areas outside. The municipal plant's service rule provides for applications for service outside city limits and for rates for that service. The commission believed that these rules indicated a general willingness by the city to serve. The area is a part of a greater area the utility has undertaken to, and admittedly does, serve.

An easement had been granted to the city for the construction of mains and pipes in the area. No monetary consideration had been paid for that easement. The fair inference was that the grantor of the easement, its successors and assigns, would be permitted to obtain water. The city contended, however, that it has a present policy of not serving outside of corporate limits. The commission observed that that was not the policy at the time it accepted the easement. A subsequent change in policy could not change its obligations.

The commission also ruled that it is its duty to regulate extensions and service of public utilities, whether publicly or privately owned, in well-defined areas within which there is a holding out to serve.

Complete abandonment of service by reason of the termination of a contract or otherwise was held to be subject to review by the commission. No reason for abandonment which would not be available to a privately owned utility could properly be urged by a municipal plant.

A city could not insist upon annexation of the area as a condition precedent to continuance of service. Such a reason was wholly unrelated to the statutory obligations of public utilities. *Re City of Milwaukee (2-U-2774, 2-U-2785, 2-U-2792, 2-U-2891).*

Other Important Rulings

THE requirements of an order of the District of Columbia commission providing that bids for the sale of securities should be solicited from at least three responsible unaffiliated financial institutions were waived with respect to the

issuance of 30,600 shares of $4.25 cumulative preferred stock without par value upon a showing that the stock was being initially offered for subscription by holders of common stock, that 80 per cent of the outstanding preferred stock was held locally, that it was listed only on the local stock exchange, and that it was doubtful that any substantial competing group of investment bankers other than those who had underwritten prior offerings of stock in the area could be assembled to submit an alternate bid. *Re Washington Gas Light Co. (Order No. 3676, PUC No. 3204/13, Formal Case No. 400).*

In dismissing the complaint of a citizens' committee against increased transportation fares, the Pennsylvania commission held that such a committee was not a party with sufficient interest in the subject matter to bring a complaint under the Public Utility Law, even though its members as individuals could properly take the same action. *Philadelphia Citizens Committee v. Philadelphia Transportation Co. (Complaint Docket No. 14939).*

A petition by an airline for authority to convert one-way tickets to round-trip, circle trip, or open-jaw tickets after passengers have commenced travel was denied by the Civil Aeronautics Board because of the additional costs which such procedure would involve without any appreciable increase in revenues. *Re Eastern Air Lines (Docket No. 4158).*

The Maine commission dismissed a municipal water utility's application for a rate increase where no evidence was offered as to the amount of plant, expense, and revenue which properly could be attributed to public fire protection. In the absence of this information the reasonableness of the rates to customers could not be determined by the commission. *Re Town of Lisbon Water Works (FC 1340).*

Titles and Index

Preprints in This Issue of Cases to Appear in PUBLIC UTILITIES REPORTS

TITLES

INDEX

Re New England Gas & Electric Association

File No. 70-2374, Release No. 9843
May 8, 1950

DECLARATION *relating to proposal to issue rights to stockholders to buy additional common stock; declaration permitted to become effective subject to condition.*

Security issues, § 50.1 — Subscription rights — Increase in ratio of common stock equity.

1. The issuance of warrants permitting holders of common stock to subscribe for additional common stock was permitted where the ratio of common stock equity to total capitalization would be increased, with a consequent improvement in the company's capital structure, p. 98.

Security issues, § 115 — Fees to dealers — Exercise of rights.

2. A limitation on the maximum payment to a dealer securing the exercise of warrants giving stockholders the right to purchase additional stock at a discount should be so conditioned that not more than the maximum will be paid to dealers in respect of any single original registered holder of record of warrants, except that where a broker, dealer, custodian, or nominee as the original registered holder of warrants advises the treasurer of the issuer that the rights evidenced by such warrants are beneficially owned, in whole or in part, by others, the limitation shall be applied separately as to each of the beneficial owners, p. 99.

By the COMMISSION: New England Gas and Electric Association ("NEGEA"), a registered holding company, has filed a declaration with amendments thereto pursuant to §§ 6 and 7 of the act, 15 USCA § 79f, g, with respect to the following proposed transaction:

NEGEA proposes to offer to the holders of its outstanding shares of common stock of record on or about May 5, 1950, the right to subscribe for approximately 173,126 shares of additional common stock at a price of $13 per share on the basis of one share of the additional common stock for each 8 shares of common stock held. Persons exercising the right to subscribe will also be given the privilege to subscribe for such of the additional shares as are not subscribed for through the exercise of the rights. Such privilege of oversubscription will entitle the shareholders to subscribe for one share of additional stock for each share owned and will be subject to allotment on a pro rata basis. Both the right and the privilege to oversubscribe for additional shares will be evidenced by transferable subscription

warrants. No fractional common shares are to be issued, but rights in excess of those necessary to subscribe for a full share may be sold or additional rights may be purchased to entitle the holders to purchase one or more full common shares.

The offering will not be underwritten but NEGEA proposes to enter into an agreement with a dealer-manager group pursuant to which the managers will undertake to form and manage a group of security dealers, which shall include the managers, to solicit subscriptions to purchase the additional common shares being offered. The managers are A. C. Allyn and Co., Inc., Draper, Sears & Co., Wagenseller & Durst, Inc., F. L. Putnam & Co., Inc., Smith Ramsay & Co., Inc., Townsend, Dabney & Tyson, and G. H. Walker & Co., and are stated to have been selected by NEGEA because they, in the past, have evidenced a substantial interest in the NEGEA common stock and their customers represent a large segment of NEGEA's common stockholders.

NEGEA proposes to pay the dealers a fee of 40 cents per common share purchased pursuant to the subscription offer, in those cases where the name of a dealer appears on the exercised warrants. NEGEA will pay to the managers for their services as such an additional fee equal to 10 cents a share for each share on which a dealer's fee is paid. In addition, NEGEA will reimburse the managers for reasonable out-of-pocket expenses, including legal fees, not in excess of $8,000.

The proceeds of the proposed sale of common stock will be applied by NEGEA to the retirement of short-term bank notes incurred for the purpose of acquiring additional common stock of certain of its subsidiaries, and any amount in excess of the amount required for such purpose will be set aside for the purpose of acquiring additional common stocks of subsidiaries.

A public hearing was held after appropriate notice and the Commission having considered the record makes the following findings:

[1] We have examined the present proposal in light of its relationship to the over-all financing program of NEGEA and the adequacy of that program to ensure the continuing financial integrity of the system. In connection with a common stock offering by NEGEA in September, 1949, we expressed our concern with a then evident trend to a lower system common stock equity, and notwithstanding the tendency of that offering and other factors noted to arrest the trend, we stated our intention to seek a strengthening of that equity at appropriate occasions.[1]

As originally filed with us, the present offering was proposed on a 1 for 10 basis which by action of the company has now been increased to a 1 for 8 basis. We note that, if the consolidated capitalization of the system be adjusted to reflect the issuance by NEGEA's subsidiaries of all bank indebtedness heretofore authorized but presently unissued, the ratio of common stock equity to the total capitalization would be 23.5 per cent and if further adjusted to reflect the present proposal the ratio would rise to approximately 25.8 per cent. Consoli-

[1] See Re New England Gas & E. Asso. Holding Company Act Release No. 9340 at p. 6.

dated earnings applicable to the common stock amounted to $1.49 per share for the twelve months ended February 28, 1950, before sinking-fund requirements on the association's debt, and $1.28 per share after sinking-fund requirements. On a pro forma basis such earnings would amount to $1.32 and $1.14 respectively. Further financial data concerning this system is set forth in our findings and opinion dated September 15, 1949.[1]

We have concluded to permit the declaration to become effective since the financing will effectuate some improvement in the company's common stock equity. We shall continue to scrutinize this system's future financing in order to assure the attainment of a stronger capital structure.

[2] The other aspect of the proposed transaction which has caused us concern is the proposed method of sale and the reasonableness of the costs to be incurred in payments to the dealers and managers. If the approximately 173,126 shares which are to be offered are subscribed for pursuant to the efforts of dealers, a maximum payment of $86,563 will be required.[2] In relation to the aggregate proceeds at the proposed offering price of $13 a share, this maximum payment approximates 3.8 per cent of such proceeds. This theoretical maximum cost will not, in practice, be realized since NEGEA's officers and trustees, who in the aggregate own 3.3 per cent of the outstanding common stock, have agreed that such warrants as are exercised by them will not bear dealers' names. Of course not all warrants exercised by other stockholders will bear such names.

The cost of the proposed sale must be appraised in the light of the fact that it is not being underwritten, the dealer-managers' compensation being related to their success in securing the exercise of rights. In considering the proposed arrangement with, and fees to, dealer and managers we must also give weight, among other things, to the extent of the discount of the proposed subscription price from the prevailing market price; ordinarily as this discount increases, the necessity for sales efforts of the character here to be undertaken and the fees to be paid therefor should diminish. Considering the extent of the proposed discount, the presence of oversubscription privileges, NEGEA's sale of common stock in September, 1949, when the offer was oversubscribed by 428 per cent, and the limited size of the proposed offering, we question whether the proposed method of sale and fees are economic as compared with available alternatives.[3] However, the management apparently considers that the

[2] This figure does not include an amount not to exceed $8,000 of "reasonable out-of-pocket expenses" of the dealer-managers which are to be paid by NEGEA.

[3] In particular, we note the recent experiences of a number of other companies which, while offering new common stock on a rights basis and at a discount from prevailing market prices comparable to that here chosen, elected to have their offerings underwritten. Theoretically, an underwriting should be more costly than NEGEA's proposed "best effort" arrangement. In practically all of the cases noted, however, the underwriting costs, whether at competitive bidding or on a negotiated basis, were materially lower than those experienced by NEGEA in its 1949 offering and those indicated in its proposed offering; significantly, too, the rights offerings underwritten at competitive bidding, all of which offerings were subject to the Holding Company Act, were at lower costs than those underwritings which were negotiated. As compared with NEGEA, these companies therefore obtained both lower costs as well as the advantages of an underwritten sale over a "best

success of its previous offering is in substantial part due to its use of a dealer-manager group soliciting purchases, and believes that such a method is still desirable for NEGEA since its common stock has a relatively limited market with which, it represents, these dealer-managers are in close contact.

We are not prepared at this time to disagree with the company and we shall permit the proposed declaration to become effective. However, we see no justification for permitting unlimited payments to dealers in respect of the exercise of warrants by a single original holder. In the NEGEA stock offering in September, 1949, and in similar offerings by other companies, the agreement with the dealer-manager group specified a maximum for such payments. In most of these cases the maximum payment has not exceeded $300 and it appears from the facts that in this case such a maximum payment is not inappropriate. We shall condition our order, therefore, to require that not more than $300 be paid dealers in respect of any single original registered holder of record of warrants, except that where a broker, dealer, custodian, or nominee as the original registered holder of warrants, advises the treasurer of the association, that the rights evidenced by such warrants are beneficially owned, in whole or in part, by others, the foregoing limitation of $300 shall be applied separately as to each of the beneficial owners.

We shall observe the results of the proposed sale in the light of other cases and shall expect NEGEA to present its further financing plans to us well in advance of their proposed offering date in order that we may have adequate opportunity to appraise their feasibility and cost in the light of available alternatives.

An appropriate order will issue.

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efforts" sale. While we recognize that these disparate cost experiences are to some extent a function of the differences in companies, we doubt that NEGEA's higher costs can be adequately explained on this ground.

Pacific Telephone & Telegraph Company

v.

Public Utilities Commission of State, et al.

S. F. 17952, 17953
— Cal2d —, 215 P2d 441
February 28, 1950; rehearing denied March 31, 1950

EN BANC. REVIEW *of orders of Commission limiting payments by an operating telephone company to a parent company for services; order limiting payments reversed and part of rate order limiting payment as a condition reversed. For Commission decisions see Re Pacific Teleph. & Teleg. Co. (1949) 77 PUR NS 129; (1949) 78 PUR NS 491.*

Accounting, § 4 — Powers of Commission — Payments under intercompany contract.

1. The statute empowering the Commission to prescribe uniform systems of accounts relates not to what transactions are to be made, but to how they are to be recorded, and it does not include by implication the power to prescribe the terms and conditions of any transaction that will be reflected in the accounts such as contractual arrangements between a telephone company and an affiliated company for payments for services, p. 105.

Security issues, § 17 — Powers of Commission — Protection of minority stockholders — Payments to majority stockholder.

2. The statute requiring Commission approval of security issues provides the extent to which the Commission may control expenditures under its terms, and this control is limited to the use to be made of funds raised by security issues; and such statutory provision does not empower the Commission to limit agreed payments by a telephone company to a parent company for services when the company is not making these payments from funds raised by security issues, p. 105.

Commissions, § 44 — Jurisdiction — Managerial matters.

3. The determination of what is reasonable in conducting the business of a public utility is the primary responsibility of management, and the Commission does not have power to prescribe terms of contracts and practices of utilities, and thus substitute its judgment as to what is reasonable for that of the management, p. 106.

Contracts, § 3 — Jurisdiction of Commission.

4. Contracts subject to regulation by the Commission are contracts which affect the relationship of the utility to the consumer, not its relationship to those who supply it with materials and services, p. 107.

Intercorporate relations, § 12 — Powers of Commission — Contracts between affiliates.

5. The Commission's control over contracts between affiliated corporations in the absence of expressed statutory authority is limited to disallowance of excessive payments for the purpose of fixing rates; and there is nothing in the Public Utilities Act to suggest that contracts of public utilities affecting rates and services are subject to greater regulation when they are between affiliated corporations than when they are not, p. 107.

Intercorporate relations, § 12 — Powers of Commission — Contracts between affiliates — Disregard of corporate entity.

6. The Commission does not have power to extend its jurisdiction over contracts between a telephone company and a parent company by applying the principles governing the disregard of a corporate entity when the Commission does not disregard the separate corporate entities and seek to exercise regulatory jurisdiction directly over the parent company, but recognizes that the parent company provides the operating company with valuable services and disregards only the terms of the contract providing for payment, p. 107.

Intercorporate relations, § 12 — Powers of Commission — Regulation of contracts with parent company.

7. The Commission has no power to limit payments by a telephone company to a parent company for services rendered under contract when such payments do not impair the operating company's capital or affect its ability to serve the public, although the Commission in fixing rates may disallow expenditures that it finds unreasonable, thus insuring that any excessive costs will be met from the operating company's profits, p. 108.

Expenses, § 5 — Powers of Commission — Intercompany payments — Contracts.

Discussion of the power of a state Commission to prevent a telephone company from passing on to ratepayers unreasonable costs for materials and services supplied under contracts with affiliated companies, p. 104.

(SHENK and CARTER, JJ., dissent.)

APPEARANCES: Arthur T. George, Eugene M. Prince, Eugene D. Bennett, and Pillsbury, Madison & Sutro, San Francisco, for petitioner; Everett C. McKeage, Roderick B. Cassidy, Boris H. Lakusta, Hal F. Wiggins, J. Thomason Phelps, Harold J. McCarthy, San Francisco, Emuel J. Forman, Ray L. Chesebro, City Attorney, Los Angeles, Roger Arnebergh, Assistant City Attorney, Los Angeles, Dion R. Holm, City Attorney, San Francisco, John W. Collier, City Attorney, Oakland, and Archer Bowden, Assistant City Attorney, Oakland, for respondents.

TRAYNOR, J.: In two petitions for writs of review the Pacific Telephone and Telegraph Company attacks two virtually identical orders of the Public Utilities Commission prescribing the terms on which Pacific may contract with the American Telephone and Telegraph Company for certain services. Although the two orders grew out of separate rate proceedings, they involve identical issues and may be

treated as one. (See [1949] 77 PUR NS 129, 78 PUR NS 491.)

American owns 87.93 per cent of the capital stock of Pacific. The Commission found that American dominates Pacific and that the contract between the two, whereby Pacific paid one per cent of its gross receipts for the services of American, was not in fact a contract but an arbitrary exaction from Pacific by its controlling parent company. It therefore entered its orders specifying the terms upon which Pacific could continue its service contract with American. They provide: "It is hereby *further ordered* that, as applied to its California intrastate operations, applicant, the Pacific Telephone and Telegraph Company, hereafter, shall pay to the American Telephone and Telegraph Company, for services rendered by it or any of its affiliates to applicant, no more than the reasonable cost incurred in the rendition of such services or the reasonable value of said services, whichever is the lesser. That in determining the reasonable value of any service rendered, consideration shall be given, among other things, to what it would reasonably cost applicant to perform such service with its own organization. Services rendered to applicant, which, in the judgment of the Commission, are not reasonably required by applicant shall not be paid for by applicant. Neither applicant nor any officer, agent, or servant of applicant, by any device whatsoever or under any pretense or guise, directly or indirectly, shall commit any act or engage in any conduct which shall be calculated to circumvent or evade the intent of this order.

"It is hereby *further ordered* that applicant shall file with this Commission, bimonthly, a verified report showing for the immediately preceding 2-calendar-month period all payments made by applicant to the American Telephone and Telegraph Company for services rendered to applicant by said American Telephone and Telegraph Company and/or any of its affiliates, together with an itemization of said services and the amount paid by applicant for each type of service rendered, such report to be filed not later than forty days after the close of the period which it covers. Said verified report shall show, for each type of service rendered, the total cost incurred by the American Telephone and Telegraph Company or its affiliates in the rendition of said service to applicant, and the payment therefor by applicant on an allocated basis, segregated as to company-wide, total California and California intrastate operations. The first report shall be for the months of January and February, 1949, and shall be filed on or before April 9, 1949.

"It is hereby *further ordered* that, as applied to its California intrastate operations, the amount of $2,250,000, on an annual basis, shall be adopted by applicant as the base and starting point for the program and procedure prescribed by this order and applicant shall be entitled to pay, on an annual basis, to American Telephone and Telegraph Company said amount for services rendered to applicant by American Telephone and Telegraph Company and/or its affiliates pursuant to the license contract; provided, however, that said amount shall be adjusted to a lesser or greater amount as the facts and circumstances may war-

rant, but, in no event, shall applicant pay more than $2,250,000 on an annual basis, without first seeking and receiving the authority of this Commission so to do." [77 PUR NS at pp. 146, 147, 78 PUR NS at pp. 503, 504.]

When these orders were entered the difference between the amount Pacific was to pay on the basis of one per cent of gross revenue as provided in the license contract and the amount allowed by the Commission on an allocated cost basis was approximately $250,000. The Commission was willing to allow payment of $2,250,000; one per cent of gross revenue was approximately $2,500,000. In these proceedings Pacific is not challenging the power of the Public Utilities Commission to disallow, for rate fixing purposes, payments to American that it finds excessive.[1] Pacific contends, however, that the Commission has no jurisdiction to prescribe the terms on which it may contract with American.

It is settled that Commissions have power to prevent a utility from passing on to the ratepayers unreasonable costs for materials and services. United Fuel Gas Co. v. Kentucky R. Commission, 278 US 300, 320, 73 L ed 390, PUR1929A 433, 49 S Ct 150; Chicago & G. T. R. Co. v. Wellman (1892) 143 US 339, 345, 346, 36 L ed 176, 12 S Ct 400. To the extent that utilities secure materials and services necessary to their business through contracts made by arms-length bargaining in the open market, the contract price is ordinarily accepted as the proper cost to the utility of the materials and services. Since the advent of the holding company, however, that both controls and provides services for a network of operating utilities, new problems in regulation have arisen. When services are rendered to an operating utility by an affiliated company that owns a controlling fraction of the stock of the operating company, the safeguards provided by arm's-length bargaining are absent, and Commissions have been vigilant to protect the ratepayers from excessive rates reflecting excessive payments by operating companies to their parents. See Western Distributing Co. v. Kansas Pub. Service Commission, 285 US 119, 126, 127, 76 L ed 655, PUR 1932B 236, 52 S Ct 283; Dayton Power & Light Co. v. Ohio Pub. Utilities Commission (1934) 292 US 290, 295, 78 L ed 1267, 3 PUR NS 279, 54 S Ct 647. Many state legislatures, not satisfied that the indirect control of payments between affiliated utility corporations through rate regulation was adequate to protect the consumer and investor from the possible abuses that could arise out of contracts between the affiliated corporations, enacted statutes specifically granting to their Commissions power to regulate payments under such contracts. See 49 Harv L Rev 957, 982–989. Similar powers over gas and electric utilities have been given to the Securities and Exchange Commission by the Federal Public Utility Holding Com-

[1] Pacific does not concede that disallowance of any part of the payments was proper; it does not attack the disallowance, however, believing that the court would not consider it in reviewing a rate-fixing order unless the rate finally fixed was confiscatory. See Market Street R. Co. v. Railroad Commission (1944) 24 Cal2d 378, 405, 54 PUR NS 232, 150 P2d 196; American Toll Bridge Co. v. Railroad Commission (1938) 12 Cal2d 184, 193, 194, 83 P2d 1; San Joaquin Light & P. Corp. v. Railroad Commission, 175 Cal 74, 76, 77, PUR 1917E 37, 165 Pac 16.

pany Act of 1935, 15 USCA § 79 et seq. See 49 Harv L Rev 957, 989–993. California, however, has not expressly granted such power to the Commission, and it is therefore necessary to determine whether the power may be fairly implied from the powers that have been granted.

The primary purpose of the Public Utilities Act, Gen Laws, Act 6386, is to insure the public adequate service at reasonable rates without discrimination. Pacific Teleph. & Teleg. Co. v. Eshleman (1913) 166 Cal 640, 663, 137 Pac 1119, 50 LRA NS 652, Ann Cas 1915C 832; Atchison, T. & S. F. R. Co. v. Railroad Commission, 173 Cal 577, 582, PUR1917B 336, 160 Pac 828, 2 ALR 975; Southern P. Co. v. Railroad Commission (1939) 13 Cal2d 89, 118, 87 P2d 1055. The act grants to the Commission broad regulatory powers, which may conveniently be divided into two classes. The Commission has been given broad powers to regulate the relationship of the utility to the consumer; thus it can determine the services that must be provided by the utility and the rates therefor. It has also been given certain specific powers to regulate the manner in which the utility provides the required services to safeguard the utility's ability to serve the public efficiently at reasonable rates; thus the Commission must approve the sale or encumbrance of operative property necessary or useful to the utility in the performance of its duties, § 51, and it must approve the issue of securities and may specify the manner in which funds so raised may be spent. § 52. The act does not, however, specifically grant to the Commission power to regulate the contracts by which the utility secures the labor, materials, and services necessary for the conduct of its business, whether such contracts are made with affiliated corporations or others.

[1] The Commission contends that jurisdiction may be implied from the provisions of § 48 of the act empowering the Commission to prescribe uniform systems of accounts. This power, however, relates, not to what transactions are to be made, but to how they are to be recorded. It enables the Commission to keep informed of the financial management of the utility and increases the effectiveness of its other powers. It cannot reasonably be held, however, to include by implication the power to prescribe the terms and conditions of any transaction that will be reflected in the accounts.

[2] The Commission contends that jurisdiction may be implied from the provisions of § 52 of the act requiring Commission approval of securities issues. It bases this contention on the premise that, by approval of the securities that Pacific issues, it provides Pacific with a defense to any action a shareholder might bring to prevent abuse of his interests by the management, and that therefore it must have the power to protect minority shareholders from abuses arising out of contracts made with the majority shareholder, American. There is nothing in § 52, however, to indicate that Commission approval of securities issues operates to deprive minority shareholders of remedies they would otherwise have. Section 52 provides the extent to which the Commission may control expenditures under its terms, and this control is limited to the use to be made of funds raised by securi-

ties issues. Pacific, however, is not making these payments from funds so raised.

[3] Section 32 of the act provides that "Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that the rates . . . charged or collected by any public utility . . . or that the rules, regulations, practices or contracts, or any of them, affecting such rates . . . are unjust, unreasonable, discriminatory or preferential, or in anywise in violation of any provision of law . . . the Commission shall determine the just, reasonable or sufficient rates . . . practices or contracts to be thereafter observed and in force, and shall fix the same by order as hereinafter provided. . . ." Section 35 of the act provides for similar powers over practices of a utility relating to the services it renders. Section 31 of the act provides that "The Railroad Commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." It is contended that the grants of regulatory power under these sections give the Commission jurisdiction to determine the terms on which Pacific may contract with American and that the license contract has so much effect on the rates and services of Pacific that it may be regulated directly by the Commission.

Almost every contract a utility makes is bound to affect its rates and services. Moreover, the question whether a contract or practice is reasonable is one on which, except in clear cases, there is bound to be conflicting evidence and considerable leeway for conflicting opinions. The determination of what is reasonable in conducting the business of the utility is the primary responsibility of management. If the Commission is empowered to prescribe the terms of contracts and the practices of utilities and thus substitute its judgment as to what is reasonable for that of the management, it is empowered to undertake the management of all utilities subject to its jurisdiction. It has been repeatedly held, however, that the Commission does not have such power. "And, finally, it may not be amiss to point out that the devotion to a public use by a person or corporation of property held by them in ownership does not destroy their ownership, and does not vest title to the property in the public so as to justify, under the exercise of police power, the taking away of the management and control of the property from its owners without compensation, upon the ground that public convenience would better be served thereby, or that the owners themselves have proven false or derelict in the performance of their public duty. Any law or order seeking to do this passes beyond the ultimate limits of the police power, however vague and undefined those limits may be." Pacific Teleph. & Teleg. Co. v. Eshleman, *supra,* 166 Cal at p. 665, 137 Pac at p. 1128; Atchison T. & S. F. R. Co. v. Railroad Commission, *supra,* 173 Cal at p. 583, PUR1917B at p. 342; Hollywood Chamber of Commerce v. Railroad Commission, 192 Cal 307, 310, PUR 1924B 503, 219 Pac 983, 30 ALR 68;

Southern P. Co. v. Railroad Commission, *supra,* 13 Cal2d at p. 118.

It might, for example, be wise business judgment to divert profits from the payment of dividends to finance expansion into fields that the utility has not theretofore entered. In the absence of an enabling statute meeting the requirements of due process, however, the Commission cannot require management to make such choices. Hollywood Chamber of Commerce v. Railroad Commission, *supra.* Similarly, in the absence of a statute granting the Commission the power to fix minimum rates to prevent injurious competition, both this court and the Commission have recognized a "zone of reasonableness" within which a carrier can fix its own rates. It is for the management to decide what rates within that zone are likely to prove most beneficial to the carrier. Southern P. Co. v. Railroad Commission, *supra,* 13 Cal2d at pp. 118, 119.

Again, there is great public interest in the relations between labor and management, for wages invariably affect rates, and disputes over them or other matters are bound to affect services. Accordingly there has been considerable state and Federal legislation to diminish economic warfare between labor and management. In the absence of statutory authorization, however, it would hardly be contended that the Commission has power to formulate the labor policies of utilities, to fix wages or to arbitrate labor disputes.

[4] In other jurisdictions the courts have generally held in interpreting statutes essentially like that of California that the Commission's control over contracts affecting rates and services is limited to regulation of contracts that directly affect the service the ratepayer will receive at a particular rate. Illinois Commerce Commission ex rel. East St. Louis, C. & W. Railway v. East St. Louis & C. R. Co. (1935) 361 Ill 606, 198 NE 716, 719; Philadelphia City Passenger R. Co. v. Public Service Commission, 271 Pa 39, PUR1921E 581, 114 Atl 642, 647, 648. Thus, the division of a city into various zones by a transit company to fix fares directly affects rates. Contracts whereby the rate drops as consumption increases or whereby the liability of a carrier for loss or damage is limited to a declared value of the goods shipped in consideration of a lower rate directly affect rates. Such contracts and practices affect the relationship of the utility to the consumer, not its relationship to those who supply it with materials and services.

It is contended, however, that the license contract between Pacific and American is not like ordinary contracts through which utilities secure materials and services; that because Pacific and American are affiliated corporations and because American dominates Pacific, the Commission may prescribe the terms of the contract between them.

[5, 6] In the absence of express statutory authority it has generally been held that a Commission's control over contracts between affiliated corporations is limited to disallowance of excessive payments for the purpose of fixing rates. Philadelphia City Passenger R. Co. v. Public Service Commission, *supra;* State ex rel. St. Joseph v. Public Service Commission, 325 Mo 209, PUR1930E 337, 30 SW 2d 8, 14; Lone Star Gas Co. v. Corporation Commission (1934) 170

Okl 292, 7 PUR NS 490, 39 P2d 547, 553, 554; see also, Columbus Gas & Fuel Co. v. Public Utilities Commission (1934) 292 US 398, 414, 415, 78 L ed 1327, 4 PUR NS 152, 54 S Ct 763, 91 ALR 1403; 49 Harv L Rev 957, 985; 48 Yale LJ 1015, 1020. In the past the California Commission has recognized similar limitations upon its powers. "All this Commission is able to do is to regulate the amount that is to be allowed in operating expenses as payment to the parent company for services rendered, and this amount should be in direct proportion to the value of the services received." (In Re Southern California Teleph. Co. [1922] 21 CRC 274, 282.) In San Diego v. San Diego Consol. Gas & E. Co. (1935) 39 CRC 261, 7 PUR NS 443, where the operating company was admittedly dominated by its parent, the Commission disallowed part of the intercompany payments in fixing new rates, but did not order the cessation of such payments. In Re Pickwick Stages System, 31 CRC 746, PUR1928D 604, the Commission under § 52 of the act limited the amount an operating company could pay its holding company out of funds derived from a new securities issue for equipment manufactured by the holding company, but did not prevent larger payments, requiring only that anything exceeding the limits it set be charged to surplus.

The Commission has thus long been conversant with the problems presented by affiliated corporations in the field of utility regulation. The instant case is apparently the first in which it has attempted to prescribe the terms and conditions of contracts between affiliates. The policy of the Commission in the past not to prescribe the terms of contracts between affiliated corporations is consistent with the provisions of the Public Utilities Act. There is nothing in the act to suggest that the contracts of public utilities affecting rates and services are subject to greater regulation when they are between affiliated corporations than when they are not.

Moreover, there is no basis for such broad jurisdiction in the principles governing the disregard of a corporate entity. In the present case the Commission is not disregarding completely the separate entities of Pacific and American. It does not seek to exercise regulatory jurisdiction directly over American, under the theory that American is in fact the operating utility subject to its jurisdiction. It recognizes that American provides Pacific with valuable services for which Pacific should pay. It would disregard only the terms of the contract by which it is determined how much Pacific should pay for the services it receives, and thus substitute its judgment for that of the management as to the reasonable amount and the method of its computation. Thus the Commission is seeking to disregard the separate corporate entities, not to exercise more effectively its existing jurisdiction, but to extend its jurisdiction.

[7] By contracting with American, Pacific is not attempting to evade the jurisdiction of the Commission. It is not making these payments from funds derived from securities issues, or attempting to evade the Commission's regulatory powers over the expenditures of such funds. (See in Re Pickwick Stages System, 31 CRC 746,

753, 754, PUR1928D 604.) Nor is it attempting to evade the prohibition of § 1500 of the Corporations Code against the impairment of capital by the payment of illegal dividends disguised as contract payments. Under §§ 60 and 75 of the act the Commission is empowered to stop illegal practices of utilities. If, by the device of a contract for services, American were exacting excessive payments that impaired Pacific's capital and thus weakened its ability to serve the public, the Commission could disregard the separate corporate entities and treat the excessive payments as an illegal dividend. Ohio Central Teleph. Corp. v. Public Utilities Commission (1934) 127 Ohio St 556, 2 PUR NS 465, 189 NE 650; see, Ballantine on Corporations (Rev Ed) § 142, p. 330; cf. Western Canal Co. v. Railroad Commission (1932) 216 Cal 639, 652, 15 P2d 853. We do not have such a case before us, however, for the payments under the license contract are not impairing Pacific's capital or affecting its ability to serve the public. Moreover, in fixing Pacific's rates the Commission may disallow expenditures that it finds unreasonable, thus insuring that any excessive costs will be met from Pacific's profits. The effect of the payments on rates and services is no greater than in any other case where the Commission and management disagree on the reasonableness of an expenditure, and the management concludes that it is good business judgment to make such payments from its profits despite the fact that it cannot recoup them from its ratepayers.

In developing a nation-wide telephone service, American has adopted the legally sanctioned practice of conducting its local operations through subsidiary operating companies. It employs a method it considers reasonable in apportioning the costs of the services rendered by it to its subsidiaries among them. The contract embodying that method cannot be differentiated from other contracts by which utilities secure labor, materials, and services, except on the theory that the judgment of management is suspect on the reasonableness of expenditures in contracts with affiliated corporations as it is not in other contracts. There is no public policy against affiliated corporations, however, and the Commission can treat them differently only to the extent the legislature so provides or to the extent that they are used as a device to defeat the exercise of powers the Commission has been granted. The Public Utilities Act is silent on the question of affiliated corporations, and only the legislature can properly decide whether they present such dangers of abuse that the Commission should have broader regulatory powers over them than it now has.

The order in SF 17952 and those parts of the order brought here for review in SF 17953 are annulled.

Gibson, CJ., and Edmonds, Schauer, and Spence, JJ., concur.

SHENK, J., dissenting: I dissent.

Under the plenary power granted to the legislature by § 22 of Art XII of the Constitution it was certainly competent by appropriate legislation to confer upon the Commission the authority to supervise contractual relationships such as existed between The Pacific Telephone and Telegraph

Company and its owner and corporate master, The American Telephone and Telegraph Company, especially in so far as contracts affecting rates are concerned. The legislature has effectively conferred such power on the Commission by § 32 of the Public Utilities Act. By that section the Commission was expressly authorized to find any existing contract affecting rates to be unreasonable. This power could be exercised as to expenditures under existing contracts in excess of payments properly allowable as part of the rate base. But more pertinently, that section also expressly authorized the Commission to determine the reasonableness of contracts affecting rates thereafter to be observed by the utilities under its jurisdiction. It is this power that the Commission is seeking to exercise by the orders under review; and in this respect it is reinforced by the general provisions of § 31.

It may be assumed that the Commission would be without power to prescribe in advance the terms and conditions of a contract and payments thereunder entered into between the petitioner and another in the normal course of business in which both parties are acting independently and at arm's length. But the contract here required to be observed by the petitioner is not of that character. The independence of action which is essential in the execution of contracts known to the law is not present. The real question as I see it is whether the Commission has exceeded its jurisdiction in making the particular orders and not, as petitioner contends, whether it was wholly without power to make them.

The facts do not show the exercise of broader regulatory power than the Commission possesses. Nor is this a case where the petitioner is deprived of the management and control of its property. We have here nothing more than a regulation guarding against future excessive payments affecting rates which could otherwise be imposed upon the petitioner without its voluntary bargaining participation. By its order the Commission is not exceeding its jurisdiction but is merely making its jurisdiction effective. In my opinion the particular contract here ordered to be observed is just such a contract as is contemplated by our law and sound public policy to be subject to supervision by the Commission in the manner proposed. I would affirm the orders.

CARTER, J., dissenting: I dissent.

The question here presented is not complex. The Pacific Telephone and Telegraph Co., an operating communications utility in California, is completely dominated and controlled by the American Telephone and Telegraph Company, a New York corporation, whose main function is to hold stock in and furnish various services to local telephone operating corporations throughout the country, most of which are controlled by it through stock ownership. American enters into purported license fee contracts with its numerous affiliates, including Pacific, under which the affiliates pay a percentage of their gross revenue for the services to be rendered by American. It is conceded that in fixing rates for Pacific, our Public Utilities Commission may ignore the percentage basis of compensation under those contracts and allow only so much as is the reasonable value of such services

or the cost thereof to American. The sole question is whether the Commission has authority to approve or disapprove such contracts. I believe there can be no doubt of such power. It arises (1) by necessary implication, and (2) by the wording of the Public Utilities Act.

On the first proposition, there are several important considerations which must be weighed. It has been aptly said: "Contracts with operating companies range in subject from a single activity to a comprehensive scheme giving virtual domination over the policies of the subsidiary utility. But the services, even when enumerated at length, are commonly described in such general terms that no clear picture of those actually rendered can be obtained from examination of the contracts . . .

"The profits accruing from the servicing relationship invite inquiry into the possibilities of abuse inherent in the holding company structure. In the control possessed by the holding company, often exercised through common officers or interlocking directorates, lies the power to dictate terms and the consequent danger of unreasonable exactions. The modern superholding company system itself furnishes a strong incentive for such exactions. Control over operating companies through a relatively small investment may be effected by the interposition of subholding units, the financing of which can be facilitated by the issuance of bonds and preferred stock . . .

"Exploitation of operating companies is detrimental to both consumer and investor. Although it is seemingly immaterial to the consumer whether the parent obtains income through high service charges or through dividends resulting from more economical operations, in fact excessive charges, unless disallowed by Public Utility Commissions, may adversely affect him. Overpayments for management services result in the swelling of operating expenses. When resorted to as a screen for profits beyond a fair return, they can prevent a rate reduction, or, by so minimizing the return that only small profits or none at all are shown, can result in an increase. And the sums exacted may be so great as to impair service to the public through lack of funds for maintenance or additions. Furthermore, overcharges for construction or engineering services, reflected in the operating company's capital account, have a dual effect upon rates: they broaden the base upon which a fair return must be earned, and enhance costs of operations by enlarging the amount annually charged to depreciation, thereby increasing the rate required to yield an adequate return . . .

"The disallowance of operating expenses increases the net operating revenue for the purposes of determining the fairness of the return in a rate case. This increase tends to subject the utility to lower rates, with the possible consequence of an ultimate decrease in income that may force a comparable reduction in expenditures." (49 Harv Law Rev 957, 959, 978, 981, 986.)

It has also been said: "It may be asked why should the Commission, as representative of the consumers be concerned over a 'raid on the treasury of the operating utility.' Directly the consumers will not be affected whether the utility is solvent or insolvent.

Their rates are based upon a fair return on a fair value and it should not matter to them who gets it. Unfortunately, this argument overlooks the simple facts that an insolvent utility has no credit with which to obtain the capital necessary for the continuous expansion of service demanded from a utility under modern conditions and that operation of a utility by receivers seems usually to be thought to result in higher operating expenses than would ordinarily be incurred." (Regulation of Utility Contracts [by George W. Simpkins] 20 St. Louis Law Rev 1, 58.) Those considerations point up the vital importance of the power of the Commission to disapprove such contracts as a part of rate regulation and of the necessity that the ability of the utility to serve the consumers be not impaired. I cannot believe that the legislature intended to leave the Commission impotent to cope with those conditions. It may be that some measure of protection is afforded by the power to refuse to recognize the license fee contract when fixing rates, but having that power, it of necessity follows that they may lock the door before the horse is stolen. If they may affect the utility management indirectly by subsequent action, surely they may take precautionary measures in advance. The Alabama Commission has pertinently observed in this connection: "We cannot conceive that it will be contended that a Commission is without authority to halt a raid on the treasury of the operating utility on the plea that we have no right in law to manage the property. From our point of view, it is not an assertion of management, but rather an assertion of reasonable control over practices which the Commission has a right to prevent and should prevent before the injury has been done if it is possible for us to arrive there in time." (See, Re Southern Bell Teleph. & Teleg. Co. PUR1932E 207, 210.) Certainly it was intended that the Commission would have the power incident, and indeed vital, to protect the consumer from improvident waste of funds to the detriment of the service. They surely have the power to accomplish directly that which they may do by indirection. While it may be that there is no showing in the case at bar that the payments to American here involved will seriously jeopardize Pacific's consumer service capacity, that is not necessary, for the situation is so fraught with potential and inherent dangers that this court should not overrule the Commission's judgment that preventive advance action is necessary. It must be remembered that these license fee contracts are not true contracts made at arm's length or on an open market. They are between corporations, one of which is controlled by the other. As such they are subject to suspicion and therefore present dangerous potentialities. It seems plainly obvious to me that if payments for such services are regularly supervised by the Commission, it will not only inure to the consumer's benefit, but will also put the utility in the advantageous position of knowing where it stands, thus escaping the risk of making excessive payments which will not be allowed in its rate base. That the Commission has such implied power is squarely declared by the Public Utilities Act. "The Railroad Commission is hereby vested with power and ju-

risdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction." Public Utilities Act, Stats 1915, p. 115, § 31, Deering's Cal Gen Laws No. 6386.

Secondly, it is clear that § 32 of the Public Utilities Act, quoted in the majority opinion, must be interpreted as empowering the Commission to regulate the purported contracts here considered. The literal wording thereof requires it.

Fear is expressed that if the instant contract is subject to approval by the Commission, all other contracts or expenditures of a utility may be scrutinized in advance. Whether or not that fear is well founded is not necessary to consider. I say only that the license fee purported contract between the operating utility and its dominating father, Pacific and American, may be so treated. There is a clear difference between such arrangements and others. They are not true contracts made at arm's length. They are definitely subject to suspicion and potent with possibilities adverse to the interests of the consumers.

It must be conceded that the contract here in question was executed by officials of Pacific who were elected by American as the principal stockholder of Pacific and owe their allegiance to American. To say that such a contract is beyond the regulatory power of the Public Utilities Commission, when it may endanger the ability of Pacific to serve its customers, is a step backward in the public utility regulation and may open the door to abuses seriously detrimental to those dependent upon service from public utilities. While I think it is clear that the Public Utilities Act expressly empowers the Commission to regulate such contracts in the public interest, there can be no question that it was the intention of the legislature to confer upon the Commission all the power necessary to protect the public interest. This, the majority overlooks in placing a strict and strained construction upon the provisions of the act in order to arrive at the conclusion reached.

I would deny the writs and affirm the orders under review.

Re Michigan Consolidated Gas Company

D-3430-50.2
April 21, 1950

APPLICATION *for authority to modify gas company's rules governing heating value of natural gas; authority granted.*

Service, § 486 — Modification of rules — Heating content of gas — Consideration of rate question.

1. Rate questions should not be considered in a proceeding relating to a small modification of a gas company's rule governing the heating value of gas, although some increase in the company's revenues will result from a reduction of the heating value, p. 116.

Discrimination, § 212 — Gas service — Difference in heating value.

2. A temporary difference of as much as 2 per cent in the heating value of gas in different sections of a service district is not discriminatory, since a gas meter error of 2 per cent or less, plus or minus, is not unreasonable, p. 117.

(McCARTHY, Commissioner, dissents in part.)

By the COMMISSION: At a session of the Michigan Public Service Commission held at its offices in the city of Lansing on the 21st day of April A. D. 1950.

On the 3rd day of February, 1950, the Michigan Consolidated Gas Company filed with this Commission its petition requesting authority to modify certain of its service rules, particularly those referring to the heating value of the natural gas it distributes in its integrated system and in its Ann Arbor District. In general it was represented that due to the character of its present sources of supply of natural gas it was impossible to comply with the presently effective service rules specifying heating value content.

After proper notice this matter was brought on for hearing on February 20th and with later hearings on April 5th and 6th. During the course of the hearings appearances were entered for the cities of Detroit, Grand Rapids, Highland Park, Muskegon, and Muskegon Heights and for the county of Wayne and the Wayne County Council CIO as intervenors.

It was shown that the company's Regulations, Rule No. 2, now specify that the gas supplied in the Detroit District and Ann Arbor District shall have an average annual heating value between 997 and 1,007 BTU per cubic foot and an average monthly heating value not less than 985 BTU per cubic foot; that the same rule requires that the gas supplied in the Grand Rapids and Greenville-Belding Districts shall have an average monthly heating value not less than 1,000 BTU per cubic foot;

that in the main portion of the Muskegon District distribution system ("A" System) the heating value shall be approximately 1,000 BTU per cubic foot and that in the "B" system of the Muskegon District that the gas should approximate 1,200 BTU per cubic foot.

It was further shown that up to the present time the supply of gas in the Grand Rapids, Muskegon, Greenville-Belding Districts and in the Northland Division of the Big Rapids District has come from Michigan production in many different fields containing gas of varying heat content. It has been possible in the past, by regulating the amount of gas taken from the several sources, to control within the limits specified by the company's rules the heating value of the gas distributed in these several markets. The Michigan production is now rapidly declining and the major source of gas in the future appears to be from the Michigan-Wisconsin Pipe Line Company which guarantees a minimum heating value of 953 BTU (on a saturated basis) per cubic foot and is at the present time actually delivering about 958 BTU gas. It is represented that it is therefore necessary that the company's rules as heretofore referred to in this opinion be changed in order to prevent violation on the part of the company, as the heating value of the gas it will have available for distribution in these areas will be less than the present rules specify.

In the Ann Arbor and Detroit Districts the sole source of supply of natural gas until on or about November 1, 1949, was the pipe line of the Panhandle Eastern Pipe Line Company. Michigan Consolidated Gas Company under its contract with Panhandle was guaranteed a minimum of 985 BTU per cubic foot and actually receives approximately 1,000 BTU or better. Under presently filed rules and regulations with the Federal Power Commission, Panhandle is permitted to reduce its guaranteed minimum heating value to 950 BTU per cubic foot.

Under existing contracts the petitioner is limited to a fixed supply of gas from Panhandle and the expanding needs of its markets will have to be supplied entirely from the Michigan-Wisconsin Pipe Line Company. In each of these districts the two sources of supply are made available to the district at points several miles apart, making it impracticable under certain operating conditions to completely mix the gas together before its introduction into the distribution system.

The result of the variation in the proportion of gas received from the two sources of supply into the distribution system at widely separated points is to create an indeterminable and indefinite heating value content over a large portion of the system at any given time. To illustrate, during a day in midsummer it might be assumed that the supply from Panhandle would satisfy the entire requirements of the Detroit District and under that condition all customers would have approximately 1,000 BTU gas, but that at a time of maximum load in the winter time when the requirements of Detroit are in excess of three times the supply from Panhandle, over two-thirds of the district would be receiving 958 BTU gas while the remainder would be receiving approximately 1,000 BTU gas.

This situation results in two important difficulties; first, that it makes

it impossible for the company to correctly administer its therm rates for large volume sales and, second, that among all other customers who are served on cubic foot rates, some would receive a higher heating value gas than others and yet pay the same rate as those having a lower heating value.

In order to avoid these difficulties the company proposes that in these two districts it be permitted, when necessary, to reduce the heating value of the Panhandle gas to approximately 958 BTU per cubic foot and suggests two methods for accomplishing this result. Each method has been shown to be entirely practical from an engineering standpoint, and that the resulting gas can be utilized in the customers' present equipment with entire satisfaction and without adjustment of any kind. The cost of one proposed method is considerably in excess of the other and the record shows that the company believes that either method will produce equally satisfactory results. It is obvious that the difficulties stated above would completely disappear after making this adjustment in heating value as each of these two districts would then have available to it gas of practically the same heating value in all parts of the distribution system and during the entire year.

[1] At the resumption of the hearing in this proceeding on April 5, 1950, counsel for intervenor, city of Detroit, moved to dismiss the petition filed by the company upon the broad general grounds that while said petition was one purportedly seeking a change in rules, it was in reality a petition for a rate increase. Specifically, counsel for the city of Detroit moved to dismiss the application in the following language: "So at this time I desire to make a formal motion to dismiss the application because of the failure of the applicant to introduce testimony bearing upon its obligation to prove the necessity of the order sought for, particularly in so far as its effect upon the company's revenue is concerned."

The county of Wayne, the city of Highland Park, and the Wayne County CIO Council concurred with the city of Detroit in its motion to dismiss.

It is contended by the applicant that the present matter is limited entirely to the problem of bringing the company's rules into a practical harmony with the facts and with the operating practices that will have to be followed, and that the matter of rates is not properly a subject to be taken up in this particular proceeding. The Commission has sustained this position and has excluded from the record all matters relating to rates as it is of the opinion that the modification of the rules of the company to comply with the characteristics of the gas supply now available for distribution and to eliminate discrimination between customers of the same category can and should be handled separately from a rate proceeding. In taking this position, however, the Commission is not unmindful of the fact that some increase in the company's revenues will result from the proposed reduction of the heating value of Panhandle gas to 958 BTU per cubic foot, but it is believed that this increase will be kept to a minimum and will, in fact, be deferred until late this fall by the following proposed operating procedure.

In the Detroit District the Panhandle gas will be distributed without change either as the sole supply or mixed with Austin pipe-line gas at Melvindale Station until the load in the district becomes so great that it is impractical to transport the Austin line gas to Melvindale. After that condition is reached, which will presumably be sometime this fall, the heating value of the Panhandle gas will be reduced to the heating value of the Austin line gas so that while the heating value of the gas in the district will be lower at some times than others, all customers at any one time will be receiving the same quality of gas.

[2] In the Ann Arbor District there will be no reduction in the heating value of the Panhandle gas until the market requirements are large enough to require supplemental gas from the Austin line to such an extent that a discriminatory condition will be created by the difference in heating value in different parts of the district. In this connection it should be noted that some Austin line gas can be mixed with Panhandle gas at the old manufactured gas plant without creating discrimination. In fact, it is the opinion of the Commission that a temporary difference of as much as 2 per cent in the heating value in different sections of the district will not be discriminatory as it has long been recognized by all regulatory bodies that a gas meter error of 2 per cent or less, plus or minus, is not unreasonable. After the difference in heating value becomes more than 2 per cent it will then be necessary to reduce the heating value of the Panhandle gas to that of the Austin line gas.

It would appear proper to mention at this point that monthly operating reports of the Michigan Consolidated Gas Company are filed with this Commission for the purpose of making available to it a current knowledge of the earnings position of the company; and that any intervenor in this proceedings, in fact, any municipality receiving service from the applicant, or the Commission itself, can promptly and effectively institute a rate proceeding with respect to this company whether or not rates are considered in this particular case.

The Commission after a careful consideration of this matter finds:

1. That the application of the company to modify the rules that specify the BTU content of the natural gas distributed by it is one which in form and content may properly be heard, considered and disposed of by this Commission in the due exercise of its statutory regulatory function and discretion.

2. That said application presents an operational problem arising from a factual situation confronting the company and which problem can and properly should be treated at this time as being separate and divisible from any rate consideration incident to, or which may or will be created by the granting of the prayer of said application by the Commission.

3. That the hearing on said application was properly confined and limited in scope to the matters contained in and contemplated by said application, the Commission reserving to a later date, either on its own motion, or upon complaint of any interested proper party, the question and disposition of the effect upon revenues and ultimate rates of the company aris-

ing from the grant of the prayer of applicant company.

4. That the company has sustained the burden of proof of showing need for the modification of its present rules and the granting of its prayer for relief and that accordingly, and for the other reasons hereinabove given, the motion of the city of Detroit to dismiss the petition of the company should be denied.

5. That the proposed modification or stabilization of gas in the Detroit and Ann Arbor Districts will be to the best interest of the customers and should be performed by the Michigan Consolidated Gas Company in the most economical and practical manner at those times, and only at those times, necessary to prevent discrimination between customers because of the difference in the quality of gas supplied to different sections of the same district.

6. That the proposed modification of the company's rules and regulations to agree with the necessities brought about by the company's sources of supply of natural gas is proper and in accord with the Commission's General Order D–1982 and should be approved.

McCarthy, Chairman, dissenting in part: I find myself unable to agree with Commissioners White and Marshall in some respects in the above order. I agree as a matter of fact that it is necessary, because of the source of supply, to revise the rules that specify the BTU content. However, I do not believe that it is equitable for customers who have been receiving natural gas of a specified BTU content to receive something less than that previously received without having the opportunity to have knowledge of the impact on their present rate. In my opinion it is discriminatory in that customers on a therm basis will not be affected ratewise by the change, whereas customers on a volumetric basis will actually be paying for the additional volume of gas necessary to produce the same BTU value as previously enjoyed.

The proposed operating procedure of the company relative to reduction of the Panhandle gas to 958 BTU per cubic foot may in fact be deferred until some future date and a resulting increase in company revenue thereby be postponed until the actual operation. Nevertheless, the finality of this order is very apparent in that the majority of the Commission in paragraph 3 of the Findings "reserves until a later date the question and disposition of the effect upon revenues and ultimate rates." The end result is that, as far as this present proceeding in the matter of BTU reduction is concerned, the Commission has, until it takes further action on its own motion, or upon complaint, lost continuous jurisdiction.

It is my opinion and so expressed from the date of the first hearing, February 20, 1950, that this matter be kept open for continuing Commission jurisdiction as to the rate matter which should follow as soon as the operation produced an effect on revenue whether in the immediate future or during the fall of this year as alleged. I dissent upon the premise that, after granting permission to change the rule as

sought, it is desirable in the public interest to continue the whole matter until the result as to revenue and rates is a matter of record.

COLORADO SUPREME COURT

Citizens Utilities Company et al.

v.

City of La Junta et al.

No. 16249
— Colo —, 215 P2d 332
February 6, 1950

EN BANC. APPEAL *from state District Court judgment reversing decision of Commission authorizing distribution of one-half of reparation fund to utility engaged in retail distribution of gas; affirmed and entire fund ordered distributed to ultimate consumers.*

Reparation, § 43.1 — Parties entitled to benefit — Wholesale gas rate reduction. Funds impounded pending appeal from an order of the Federal Power Commission reducing wholesale rates for natural gas belong, after affirmance of the order, to the ultimate consumers who, during the period of impoundment, paid retail rates based on the wholesale rates which were adjudged excessive and not to the intervening utility engaged in the retail distribution of gas.

APPEARANCES: Milton S. Gould, New York city, Lawrence Thulemeyer, La Junta, J. L. Rice, Denver, for plaintiff in error; John W. Metzger, Attorney General, Allen Moore, Deputy Attorney General, Paul M. Hupp, Assistant Attorney General, amici curiae, on behalf of the formal respondent below; Chas. E. Sabin, La Junta, Robert R. Sabin, La Junta, Perry E. Williams, Rocky Ford, William L. Gobin, Rocky Ford, Cover Menden Hall, Rocky Ford, Willard Allen, Las Animas, Fred E. Sisk, Las Animas, L. E. Langdon, Pueblo, Myles P. Tallmadge, Denver, Byron G. Rogers, Denver, for defendants in error.

HAYS, J.: We will herein designate the parties as they appear below, viz., city of La Junta et al., as petitioners; Citizens Utilities Company as intervenor; and the Public Utilities Commission of the state of Colorado as Commission.

This action was brought by petitioners to review a decision of the Commission approving distribution to local consumers of natural gas of one-half of a fund of $176,278.82, held in the

custody of the United States circuit court of appeals, and the other half thereof to the intervenor for rehabilitation of its local pipe lines said to have rapidly deteriorated because of peculiar soil conditions.

The trial court reversed the decision of the Commission, in so far as the same authorized the distribution of one-half of said fund to the intervenor, and sustained it in all other particulars.

The intervenor, during all times herein mentioned, operated plants for the distribution of natural gas at retail to consumers in the city of La Junta and in and near surrounding municipalities, pursuant to rate schedules filed with, and approved by, the Commission. The intervenor purchased said gas at wholesale from Colorado Interstate Gas Company, and the rates paid by the ultimate customers of the intervenor were based, inter alia, upon those paid to the Interstate Company.

As a result of proceedings instituted March 14, 1939, before the Federal Power Commission, the Interstate Company was ordered March 18, 1942, 3 FPC 32, 43 PUR NS 205, to reduce its wholesale rates to the intervenor. Thereafter an appeal was taken by the Interstate Company to the circuit court of appeals where it obtained a stay of the Power Commission's order reducing said wholesale rates and permitting the use of the old rates, pending appeal, on condition that the Interstate Company deposit with said court, out of wholesale charges collected, the difference between the rates then charged by the Interstate Company and the lower rates prescribed by the Power Commission. During the pendency of said appeal in the circuit court and in the United States Supreme Court, viz., from May 20, 1942, to September 25, 1945, to which we hereinafter refer as the impoundment period, there accumulated in said fund, on account of the said deposits, the sum of approximately $176,278.82, plus interest to date, which fund forms the subject matter of this controversy.

The order of the Power Commission reducing said wholesale rates was sustained on appeal. Colorado Interstate Gas Co. v. Federal Power Commission (1944) 54 PUR NS 1, 142 F2d 943; Id., (1945) 324 US 581, 89 L ed 1206, 58 PUR NS 65, 65 S Ct 829, and the fund is still held subject to order of the circuit court of appeals, awaiting proper determination as to its disposition.

Following the affirmance by the United States Supreme Court of the order of the said Federal Power Commission, the intervenor made application to the circuit court of appeals for an order authorizing the payment of the fund to said intervenor, claiming that it was entitled to the fund as of right since it was created by payments made by the intervenor to the Interstate Company, which application was, on November 9, 1945, denied without prejudice. Thereafter upon request of Public Utilities Commission the Court withheld distribution of the fund pending action of said Commission.

November 5, 1945, following a series of conferences between the Commission, the intervenor and respective counsel, there was filed before the Public Utilities Commission upon its own motion a proceeding entitled "In Re Rates, Practices, Rules, and Regu-

lations of the Citizens Utilities Company," Case No. 4932, on the docket of said Commission, which was initiated by the filing of a "statement" otherwise referred to as "Decision No. 25102."

Following the hearing on the above complaint or decision, it was determined, in so far as pertinent, on January 14, 1947, Decision No. 27319, 67 PUR NS 53, that the impounded fund belonged solely to the intervenor's customers who had purchased gas during the impoundment period, and that the intervenor had no interest therein.

Thereafter intervenor petitioned the Commission for a rehearing in which it claimed to be the sole owner of said fund, but purposed that in the event the same was turned over to it, that one-half thereof would be paid to the consumers and the other half used by intervenor to rehabilitate its mains and connections which, as said, had eroded because of unusual local soil conditions.

Thereafter, and on January 3, 1948, there was filed "Commissioner's Supplemental Order" (Decision No. 29685) 73 PUR NS 59, wherein the Commission again found that the ultimate local customers of gas were the sole owners of said fund, but nevertheless, because of some doubts said to exist as to the regularity of the proceedings and the jurisdiction of the Commission, accepted intervenor's proposal and thereupon ordered that one-half of said fund should be awarded to intervenor for the replacement of its mains and connections.

Subsequently, on January 31, 1948, petitioners herein and customers of intervenor, during the impoundment period, brought this action in the district court against the Public Utilities Commission to review the proceedings before said Commission and in due course, in response to a citation, the Commission certified its complete records to the court. Thereafter, Citizens Utilities Company intervened and, following denial of its motion to quash the writ and dismiss the case, answered, in which it challenged the jurisdiction of the court to review, and the right of petitioners to maintain the action, again asserting that the Commission, whose proceedings were to be reviewed, had no jurisdiction or authority to order the funds, or any part thereof, paid to intervenor's customers, "except upon the request and with the consent of this intervenor . . ."

The trial court on January 4, 1949, following the trial on the issues raised by the pleadings found in favor of petitioners and against the intervenor; reversed the Commission in so far as it authorized the distribution of one-half of the fund to intervenor; and affirmed its action in all other particulars. The judgment of the trial court to the above effect is here for review.

Four days before the case was docketed in this court, April 22, 1949, and on to wit, April 18, 1949, all of the questions advanced by intervenor as to the ownership of said fund, was conclusively decided adverse to its contentions in Federal Power Commission v. Interstate Nat. Gas Co. (1949) 336 US 577, 93 L ed 895, 79 PUR NS 45, 47–50, 69 S Ct 775, 778, the opinion being delivered by Mr. Justice Douglas. The following are excerpts therefrom:

"The basis of the claim stated in

their petitions for intervention is that they are entitled to the fund as of right, since it was created by their payments. But we would be unmindful of the purpose of the act and the responsibility of the Federal courts under it, if we so ruled. The aim of the act was to protect ultimate consumers of natural gas from excessive charges. See Federal Power Commission v. Hope Nat. Gas Co. *supra*, 320 US [591], 610, 612, 88 L ed [333], 349, 350, 51 PUR NS [193], 205, 206, 64 S Ct [281], 291, 292. They were the intended beneficiaries of rate reductions ordered by the Federal Commission, though state machinery might have to be invoked to obtain lower rates at the consumer level. The rates charged a wholesaler are part of its costs, reflected in its rate base. Reduction of those costs normally will lead in due course to reduction in its resale rates, unless we are to assume that the passage of the Natural Gas Act was an exercise in futility. . . .

"It is the responsibility of the court which distributes the fund accumulated under its stay order 'to correct that which has been wrongfully done by virtue of its process.' United States v. Morgan (1939) 307 US 183, 197, 83 L ed 1211, 1220, 29 PUR NS 47, 56, 59 S Ct 795, 802. That responsibility plainly cannot be discharged by payment of the fund to those who show no loss by reason of the court's action.

". . . The Federal court, through exercise of its power under § 19 of the act [15 USCA § 717r, 4 FCA title 15, § 717r], issued the stay order under which the fund was accumulated. When a Federal court of equity grants relief by way of injunction it has a responsibility to protect all the interests whom its injunction may affect. Inland Steel Co. v. United States (1939) 306 US 153, 83 L ed 557, 59 S Ct 415. It assumes the duty to make disposition of the fund in accord with equitable principles. . . . If in a particular case the court reaches the question of reasonableness of rates, it does so only for purposes of distributing the fund for whose creation it alone was responsible. It does not fix or prescribe rates for the past or the future. The reasonableness of rates charged by the companies who claim the fund is wholly ancillary to the problem of determining what claimants are equitably entitled to share in it. See Atlantic Coast Line R. Co. v. Florida (1935) 295 US 301, 79 L ed 1451, 55 S Ct 713; United States v. Morgan, *supra*.

. . . . . .

"If clear and speedy state remedies are available, the Federal court might hold the fund until those having the final say on the state law questions have spoken. Cf. Thompson v. Magnolia Petroleum Co. (1940) 309 US 478, 483, 84 L ed 876, 880, 60 S Ct 628, 630; Spector Motor Service v. McLaughlin (1944) 323 US 101, 89 L ed 101, 65 S Ct 152. But in the absence of such a showing the Federal court in the interest of dispatch should proceed to determine the questions, relying on such sources of local law as may be available, including information from state regulatory agencies. The Federal court may in its discretion disburse the funds directly to either the local distributing companies or the ultimate consumers or work out an administrative scheme whereby the distribution is made pursuant to directives of state agencies.

"In conclusion, the task of the Federal court in distributing the fund accumulated by virtue of its stay order is to undo the wrong which its process caused. The basic problem, therefore, is not to fix rates but to determine who suffered a loss as a result of the court's action in granting the stay. What in fact would have happened as a consequence of Federal or state law if the stay had not been issued, no one can know for a certainty. But the Federal court must make its prognostication, whether an excursion into Federal or state law questions is entailed. Distribution of the fund should not involve prolonged litigation. It is an administrative matter involving the exercise of an informed judgment by the Federal court and should have the flexibility and dispatch which characterize the administrative process."

From the foregoing opinion of the United States Supreme Court and authorities therein cited, it is conclusively established that the intervenor's customers, during the impoundment period, are the sole owners of the fund in question; that the intervenor has no right, title or interest therein; and that the fund is held in trust for those from whom it was unlawfully taken.

The intervenor's schedule of rates, which were in effect during the impoundment period, were at all times on file with, and approved by, the Commission, and, so far as this record shows, there was no deviation therefrom. It necessarily follows that no valid claim against the intervenor could be made for such period by the petitioners for reparations or damages, and likewise no valid claim could be made by intervenor against Colorado Interstate Gas Company for overcharges. It is simply a situation where the Interstate Company collected from the ultimate customers of the intervenor excessive charges, using the intervenor as a catspaw therefor. The intervenor has shown no loss by the transaction because it collected from its customers all that it was entitled to receive under its schedule of rates.

Originally there was in the fund something over $8,000,000 which accumulated as a result of overcharges paid to the Interstate Company by distributors in Denver, certain northern Colorado cities and towns, Pueblo, Colorado Springs, and Cheyenne, Wyoming, which distributors occupy the same relative position as intervenor herein. No part of said fund was paid to, or claimed by, any of said distributors and all of said fund except the part here in question, has now been paid to the ultimate gas consumers which were found by the Federal court to be eligible to receive the same.

The intervenor, having no right, title, or interest in the fund, is in no position to raise technical objections in proceedings in which it is not concerned, and should not be permitted to further delay the distribution of said fund among its rightful owners.

The judgment of the trial court is accordingly affirmed.

NEW YORK STATE PUBLIC SERVICE COMMISSION

Re Beach Transit Corporation

Case 13509
April 25, 1950

PROCEEDING *to revoke certificate of omnibus line because of revocation of local consent; certificate revoked.*

Certificates of convenience and necessity, § 149 — Revocation.

A certificate of convenience and necessity authorizing the operation of an omnibus line in a city should be revoked upon a showing that the city has revoked its consent to the operation of the line for failure of the company to comply with conditions set forth in the consent.

APPEARANCES: Sherman C. Ward, Acting Counsel (by Philip Hodes, Associate Attorney), for the Public Service Commission; Harry M. Krokow, New York city, Attorney, for Beach Transit Corporation; Sol Paseltiner, Yonkers, Attorney, for Beach Transit Corporation; Harold J. Drescher (by Jacob Katz), New York city, Attorney, for Nassau Bus Lines; Bernard M. Bailey, Corporation Counsel, Long Beach, for the city of Long Beach.

By the COMMISSION: The Beach Transit Corporation has previously been granted authority, in Case 13509, for the operation of an omnibus line in the city of Long Beach and in the adjacent portion of the town of Hempstead. The present proceeding in Case 13509 was instituted following the receipt of a certified copy of a resolution of the common council of the city of Long Beach directing the corporation counsel "to forthwith notify the Public Service Commission of the state of New York of the termination of the consent and franchise heretofore granted by the city of Long Beach to the Beach Transit Corp. . . . ," and "to request the Public Service Commission of the state of New York to revoke the certificate of convenience and necessity heretofore issued to the Beach Transit Corp. . . . "

Hearings were held on January 20 and February 14, 1950. Briefs were filed on February 28th and reply briefs on March 7, 1950.

The facts in this case are relatively simple and for the most part were not the subject of much controversy.

A certified copy of the original consent granted by the city of Long Beach to Beach Transit was received in evidence as Exhibit 18. It is dated December 29, 1947, and is for a term of twenty-five years. The following is a summary of the provisions thereof which are involved in this proceeding:

Paragraph (h). Requires the company to use at least 14 busses of which

at least 4 shall be 39-passenger vehicles. Requires that all "temporary equipment" be replaced with new equipment within six months and that the company "will have among its assets busses of the approximate value of $100,000."

Paragraph (j). Requires the company to pay the city of Long Beach one per cent of the gross monthly income derived from its total bus operations.

Paragraph (t). Provides that before consent shall be effective, the company shall file with the city clerk a bond in the sum of $25,000 with a corporate surety thereon to the effect that the company will hold the city of Long Beach harmless from any liability. It further provides that the bond shall be filed not later than ten days from the date of issuance by the Public Service Commission of a certificate of public convenience and necessity.

By letters dated December 19 and 21, 1949, respectively, the two mortgagees notified the city of Long Beach that Beach Transit had failed to make certain payments due under chattel mortgages held by them. Certified copies of these letters were received in evidence as Exhibits 23 and 24.

On January 1st, the Long Beach city council adopted the following resolution:

"Whereas, the Beach Transit Corp. has abandoned the franchise to operate busses within the city of Long Beach by reason of the notice received by the city, that the mortgage of the equipment of said Beach Transit Corp. was in default by reason of nonpayment and amortization and interest thereon, and by reason of the further overt acts on the part of the Beach Transit Corp. by discharging all of its employees of said corporation, effective midnight December 31, 1949, and the failure of said corporation to license its equipment for the year 1950, and

"Whereas, the Nassau Bus Line, Inc., has at the request of the Public Service Commission of the city of New York consented to supply service for the city of Long Beach during the emergency caused by the abandonment of its franchise by the Beach Transit Corp., now, therefore, be it

"Resolved, that the city manager be and he hereby is authorized to enter into an agreement with Nassau Bus Line, Inc. to save and hold said corporation harmless from any damage other than loss of revenue arising out of said emergency service."

On January 1st, at 5:50 A. M. that morning, Beach Transit placed in operation a bus hired from the Commodore Coach Corp. The testimony as to just what happened after that is contradictory. According to Mr. Greenfield, at 2:30 P. M. the police ordered this bus off the streets, telling them that the drivers would be arrested and the bus impounded if it continued to operate. It is claimed by the city of Long Beach that the bus in question was a sight-seeing bus and that it did not indicate that it was a bus of the Beach Transit Corporation, but according to Mr. Greenfield the bus had a sign indicating that it was being operated in the service of the Beach Transit Corporation. The testimony is also not clear as to when, on whose complaint, or on what charges, one or more Beach Transit drivers were arrested. It is, however, conceded by Mr. Bailey that he told Mr. Greenfield that "no longer having a franchise he would not be permitted

to operate with impunity on the streets of the city of Long Beach."

Under the statutes of this state, before a motor bus line can legally operate two conditions must be complied with: (1) a proper local consent must be secured from any city through which the line is to operate, and (2) a certificate of convenience and necessity must be secured from the Public Service Commission. It definitely appears from the evidence received at the public hearings held in this proceeding that Beach Transit Corporation failed to comply with the conditions set forth in the consent granted by the city of Long Beach and that thereafter that city revoked its consent. Beach Transit Corporation was therefore without a consent from the city of Long Beach and its continued operation would be in violation of the statute. Under these circumstances the Commission believes that the certificate of convenience and necessity granted to this corporation should be revoked.

Any question of the legality of the action of the city of Long Beach in revoking its consent has been determined in a proceeding brought by Beach Transit Corporation against the city of Long Beach. In that proceeding Justice Daley, sitting in supreme court, Nassau county, on March 30, 1950, handed down a decision wherein he held:

"In this action to enjoin the defendants from interfering with the plaintiff's operation of an omnibus line in the city of Long Beach, for a declaratory judgment that the acts of the common council of the city in terminating the franchise of the plaintiff to operate in the city of Long Beach are illegal and void, and that the ordinance granting a temporary permit to the defendant Nassau Bus Line, Inc., to operate busses in the city of Long Beach was likewise illegal and void, and to enjoin the said company from operating within the city of Long Beach, in alleged competition with the rights granted to the plaintiff, pursuant to an alleged franchise, the court reserved decision upon the defendants' motion to dismiss the complaint at the end of the plaintiff's case. The basis of the entire cause of action is a conspiracy between defendants and a local political leader to deprive the plaintiff of its franchise rights, and to grant them to a competitor, but the plaintiff's case was devoid of any such proof. Indeed, the proof shows that subsequent to the alleged conspiracy, the officials of the city of Long Beach coöperated with the plaintiff in reducing is financial burdens, in order to enable it to continue, and that by its own actions, plaintiff abandoned its franchise and left the city virtually without bus service, as a consequence of which the administration which went into office on January 1, 1950, passed an ordinance permitting the defendant Nassau Bus Line, Inc., to operate busses in the city as an emergency measure. It was conceded upon the trial that on January 1 and January 2, 1950, all of the plaintiff's busses were in the garage and no New York state license plates had been obtained from them; that only one bus was being operated and that had been rented by the plaintiff from the Commodore Bus Company of Manhattan, and was being operated by a Commodore driver and one Kohler, a driver of the plaintiff, who collected the fares. Under

these circumstances, the plaintiff has failed to establish a cause of action, and its complaint must, therefore, be dismissed."

For the reasons above set forth, and in view of the decision of the supreme court, an order should be issued abrogating the certificates of convenience and necessity granted by orders adopted by this Commission on April 20, 1948, and June 1, 1949.

FEDERAL POWER COMMISSION

Re Jersey Central Power & Light Company

Docket No. G-1324
May 4, 1950

APPLICATION *by electric company for authority to construct and operate natural gas pipe line for a limited use; dismissed for lack of jurisdiction.*

Certificates of convenience and necessity, § 53.5 — When required — Natural gas pipe line.

An electric company need not obtain a certificate pursuant to § 7 of the Natural Gas Act, 15 USCA § 717f, to construct and operate a natural gas pipe line for the sole purpose of transmitting natural gas for use as boiler fuel in its generating plant if the facilities will not be used for the transportation or sale of natural gas in interstate commerce for consumption by others.

By the COMMISSION: On February 10, 1950, Jersey Central Power & Light Company (Applicant) a New Jersey, corporation with address at Asbury Park, New Jersey, filed an application for a certificate of public convenience and necessity pursuant to § 7 of the Natural Gas Act, 15 USCA § 717f, as amended, authorizing the construction and operation of approximately 7 miles of 10-inch ID welded steel pipe line extending from a point of connection on Applicant's transmission pipe line near Old Bridge and extending to Applicant's electric power plant situated in the borough of Sayreville, Middlesex county, New Jersey.

Applicant proposes to utilize the described facilities for the purpose of transmitting natural gas for use as boiler fuel in its electric generating plant in Sayreville and for no other purpose Applicant has a contract for the purchase of a firm supply of natural gas from Texas Eastern. Applicant proposes to purchase an additional-

supply of natural gas on an interruptible basis from Texas Eastern in quantities such as Texas Eastern may offer and which Applicant may desire to accept. No sales are proposed to be made by Applicant of this additional supply of gas, but such quantities will be utilized solely by Applicant at its own electric generating plant.

In its order issued September 28, 1949, in Docket No. G–1228, the Commission granted a certificate of public convenience and necessity authorizing Applicant to construct and operate a pipe line extending from an interconnection with the natural gas pipe line of Texas Eastern Transmission Corporation approximately 39.4 miles to Applicant's gas manufacturing plant at Long Branch, New Jersey. The pipe line for which authorization is sought herein extends from a point of connection with the line authorized in Docket No. G–1228. In its order issued September 28, 1949, in Docket No. G–1228, the Commission provided that the pipe line therein authorized should be utilized for the "transportation of natural gas produced outside of New Jersey to its (Applicant's) Long Branch plant . . ." No authorization was granted in that docket for the utilization of the line therein authorized for any other purpose.

The Commission finds:

(1) The natural gas transmission facilities authorized by the Commission in Docket No. G–1228 may be utilized only for the purposes set forth in said order, and the operation here proposed may not be performed until, upon proper petition, the Commission modifies the certificate in Docket No. G–1228 to so provide.

(2) The facilities proposed to be constructed by Applicant, as described in its application in this proceeding, are to be used solely by Applicant for the transportation of natural gas to its electric generating plant and no sales of natural gas are to be made by means of these facilities for public consumption.

(3) The facilities sought to be constructed by Applicant would not be used for the transportation or sale of natural gas in interstate commerce for consumption by other than the Applicant.

(4) The facilities described by Applicant do not require a certificate of public convenience and necessity pursuant to § 7 of the Natural Gas Act, *supra,* as amended.

The Commission *orders:*

The application in this proceeding be and it is hereby dismissed for lack of jurisdiction over the facilities proposed to be constructed and the operation thereof.

Industrial Progress

A digest of information on new construction by privately managed utilities; similar information relating to government owned utilities; news concerning products, supplies and services offered by manufacturers; also notices of changes in personnel.

Springfield Boiler Announces Appointment of Representatives

SPRINGFIELD BOILER COMPANY, Springfield, Illinois, manufacturer of power plant steam generating equipment, announces the appointment of H. L. MacElroy as manager of its Chicago office, located at 612 N. Michigan avenue, and factory sales representative for the company in the Chicago area.

In Boston, Seltzer & Company, Inc., has recently been appointed representative for Springfield with headquarters located at 805 Beacon street, Boston 15. Other recent Springfield appointments include Krewasco Corporation at 252 Mt. Hope avenue, Rochester 7, New York, covering western New York state.

Equitable Gas Plans New Pipeline Facilities

EQUITABLE GAS COMPANY, of Pittsburgh, Pa., has applied for authority to construct natural gas facilities near Waynesburg, Pa., which would increase the capacity of the company's pipeline system by approximately 21,000,000 cubic feet per day.

The proposed project, estimated to cost $1,684,700, includes a new compressor station, a dehydration plant, and a total of 32,200 feet of 16-inch, 4,700 feet of 12-inch, 42,000 feet of 6-inch, and 11,000 feet of 8-inch pipelines.

McCabe-Powers Auto Acquires American Coach & Body

MCCABE-POWERS Auto Body Company, St. Louis, Mo., has purchased the American Coach & Body Company, Cleveland, Ohio, the oldest and largest manufacturer of automotive equipment for public utilities. The announcement was made jointly by John J. Powers, vice president of McCabe-Powers and Robert W. Hadley, president of American Coach & Body.

Products of both companies will continue to be manufactured in both companies' plants.

The public utility division of McCabe-Powers, with this acquisition of American Coach & Body, will be known as the "Powers-American" Division of the firm.

A-C Bulletin

DESIGN and construction features of Allis-Chalmers' power and distribution transformers—both large and small and secondary network—are described in a new 16-page bulletin released by the company.

Also covered are the three types of load-ratio-control mechanisms available on Allis-Chalmers' power transformers, depending on the voltage, kva capacity, and other circuit conditions.

The bulletin also discusses step regulators, pole-type regulators, unit substations of all types, and instrument transformers.

Copies of the bulletin, "Allis-Chalmers Power and Distribution Transformers," 01B6186B, are available upon request from Allis-Chalmers Manufacturing Co., 965 S. 70th street, Milwaukee, Wisconsin.

Folding "Gooseneck Trailer" Introduced by Martin Machine

THE new Martin "Folding Gooseneck" Trailer in capacities of 20, 27, and 32 tons is introduced in a four-page bulletin just issued by Martin Machine Company.

Highly stressed is the quick, easy, one-man operation of this trailer which does away with ramps. When the "folding gooseneck" is lowered to the ground, one man can load or unload equipment such as heavy tractors, motor graders, and shovels in a fraction of the time ordinarily required. Also pictured is the lower platform height which makes for increased roadability, greater clearance for viaducts, bridges and wires.

This bulletin is available by writing Martin Machine Company, Kewanee, Illinois.

Wm. H. Larkin Joins Air Preheater

R. M. GATES, president of Air Preheater Corporation, 60 East 42nd street, New York City, has announced that William H. Larkin has joined the company's sales organization in New York. He formerly was with the Sturtevant Division of Westinghouse Electric Corporation, in charge of power plant work for the eastern district, with headquarters in New York City.

Unique Protective Device Limits Short Circuit Currents

A CURRENT limiting device for the protection of low voltage switchgear, bus ways, circuit breakers, transformers, and other electrical installations against short circuit damage has been marketed by The Chase-Shawmut Company, Newburyport, Massachusetts.

The Amp-trap is said to be of a unique design, combining high current interrupting

(*Continued on page 26*)

ability with such extremely fast action that the current is cut off long before it can build up to dangerous levels.

Amp-traps are furnished in various models and ratings to match the electrical characteristics of old and new power installations. They have high interrupting capacity regardless of their current carrying capacity.

For more information, write The Chase-Shawmut Company, 374 Merrimac street, Newburyport, Massachusetts.

Kennedy Valve Appoints Vice President

J. Lawrence Kennedy has been elected vice president and secretary of The Kennedy Valve Mfg. Company, Elmira, New York .He has also been elected to the board of directors of the company.

Before joining the Kennedy organization in 1949, Mr. Kennedy was vice president of Charles L. Rumrill & Company, Rochester, New York, advertising agency.

Calgon Issues Folder on "Threshold Treatment"

Prevention of lime scale deposition by "threshold treatment" of the water with Calgon is described in a new folder offered by the manufacturer, Calgon, Inc., Pittsburgh, Pennsylvania. Calgon, a vitreous sodium phosphate, is dissolved and the solution is added continuously to the water, effective concentrations ranging from about 1 to 10 parts Calgon per million of water. Slightly higher concentrations have proved effective, it is added, in eliminating deposition of other scale-forming salts such as calcium sulfate, calcium sulfite, and various salts of barium, as well as calcium carbonate. Typical applications of threshold treatment are cited.

New Splices and Deadends Eliminate Looping, Clamping

Designed for strength and economy is a new line of automatic type splices and deadends for 5/16 in. and 3/8 in. steel strand messenger, static, and guy wires. Strandlink and Strandvise are the identifying names.

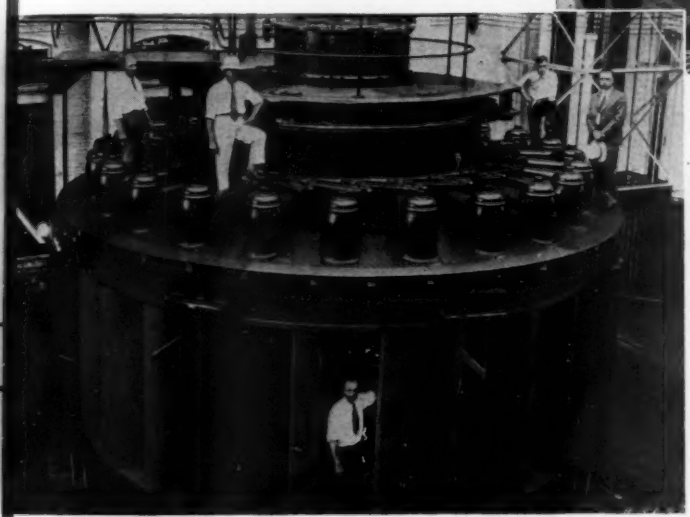
Reliable Electric Company, Chicago, the manufacturer, claims that their holding power surpasses the ultimate strength of standard steel strand, irrespective of grade.

In addition, claim is made for marked installed cost reduction, steel strand savings and speed of assembly.

Descriptive literature and samples of Strandlink and Strandvise may be obtained from Reliable Electric Company, 3145 Carroll avenue, Chicago 12, Illinois.

(*Continued on page 28*)

FROM THE SMALLEST TO THE LARGEST



**500 Horsepower—
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HYDRAULIC turbines in all sizes, using either Francis or propeller type runners, have been built at Newport News for use throughout the United States and many parts of the world.

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Newport News built hydraulic turbines, aggregating a rated output of more than 5,900,000 horsepower, have been furnished for such plants as Grand Coulee, Hoover, Norris, Wilson, Dnieprostroy, and many others. Hydraulic turbine work now in progress at Newport News is in excess of 1,000,000 horsepower. Inquiries are invited.

"Water Power Equipment" booklet will be sent upon request.

NEWPORT NEWS
SHIPBUILDING AND DRY DOCK CO.
NEWPORT NEWS, VIRGINIA

Cited for Outstanding Service To Gas Industry

COLONEL A. E. Higgins, manager of utility relations of General Electric's Air Conditioning Department, was awarded a citation for outstanding service to the gas industry at the recent annual meeting of the Gas Appliance Manufacturers' Association in White Sulphur Springs, West Virginia. The award, made by Mr. Stanley H. Hobson, president of the association, cited Mr. Higgins' contributions to the industry as chairman of the association's foreign trade committee from 1948 to 1950.

Colonel Higgins has been identified with the gas industry since 1927, and is active in a number of regional and national gas associations.

New Running Board for Line Installations

POWER line installations are made easier, faster, and safer with the new Miller Swivel Running Boards, according to the manufacturer, General Machine & Welding Works, Pomona, California.

Miller Swivels are said to turn freely under load, eliminating line twist and kinking. As a result, the kinking caused as the line leaves the drum is removed. Line breakage caused by kinking is prevented. Also the torque usually present in the lead line on long pulls is relieved. Linemen can make connections easier and with greater safety with these torque relieved lines.

After the lead line is in position over the poles and the lineman has positioned the Running Board at the first pole, no further pole climbing is necessary.

Detailed literature is available.

William Wallace Co. Appoints Sales Representatives

WILLIAM WALLACE COMPANY, manufacturers of Metalbestos Gas Vent Pipe, has announced the appointment of the following sales representatives:

Emory C. Perry Company, 3500 South Archer avenue, Chicago 9, Illinois, for the states of Illinois, Indiana, and Wisconsin.

W. J. Hacht & Associates, 919 South Main street, Royal Oak, Michigan, for the state of Michigan.

Harry O. Donnelly, P. O. Box 5127, Akron 13, Ohio, for the state of Ohio.

Allen A. Putt, 120 Cedar street, New York 6, New York, for Greater New York city, southeast Connecticut, and northern New Jersey.

Stanley J. Ormsby, 105 Fox street, Buffalo 12, New York, for up-state New York and northern Pennsylvania.

Al Paeff, Box 84, Allerton, Massachusetts, for the New England states.

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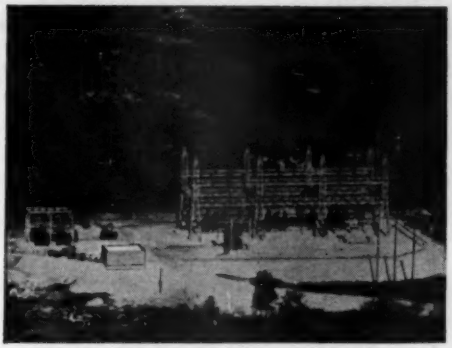

New Hudson Substation of Public Service Company of New Hampshire, a unit in the company's large expansion program. (Photo by P.S.Co. of N.H.)

Bank of 60 Exide-Manchex EME-11 Batteries in new Hudson Station.

The new Hudson Substation of Public Service Company of New Hampshire is one of the most efficiently designed and equipped in the country. It's on the Nashua terminus of a 115-kv transmission line from the recently constructed Schiller Mercury Steam Generating Station. Also, it is a terminus of a power exchange across the Massachusetts border.

In the battery room is a 60-EME-11 Exide-Manchex Battery, which is used for switchgear operation, emergency lighting and communication. Considered in its selection were its fine service record and many outstanding features, which include:

- the famous manchester positive plate with its *exclusive* lead button construction.
- slotted plastic separators, impervious to chemical and electrical reaction.
- plastic spacers that maintain plate alignment.
- the latest development in molded glass jars.
- heavy terminal posts with copper inserts for extra conductivity.

Combined, these and other outstanding characteristics assure you of *positive* switchgear operation. Use the Exide-Manchex for all stationary battery applications in central and substation service.

THE ELECTRIC STORAGE BATTERY COMPANY, Philadelphia 32
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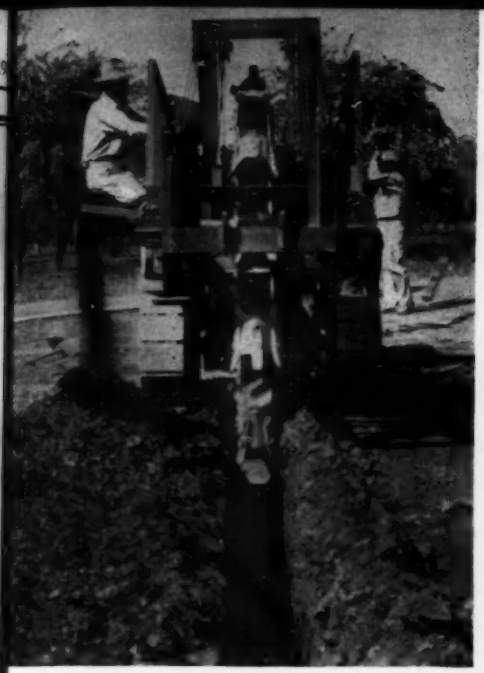

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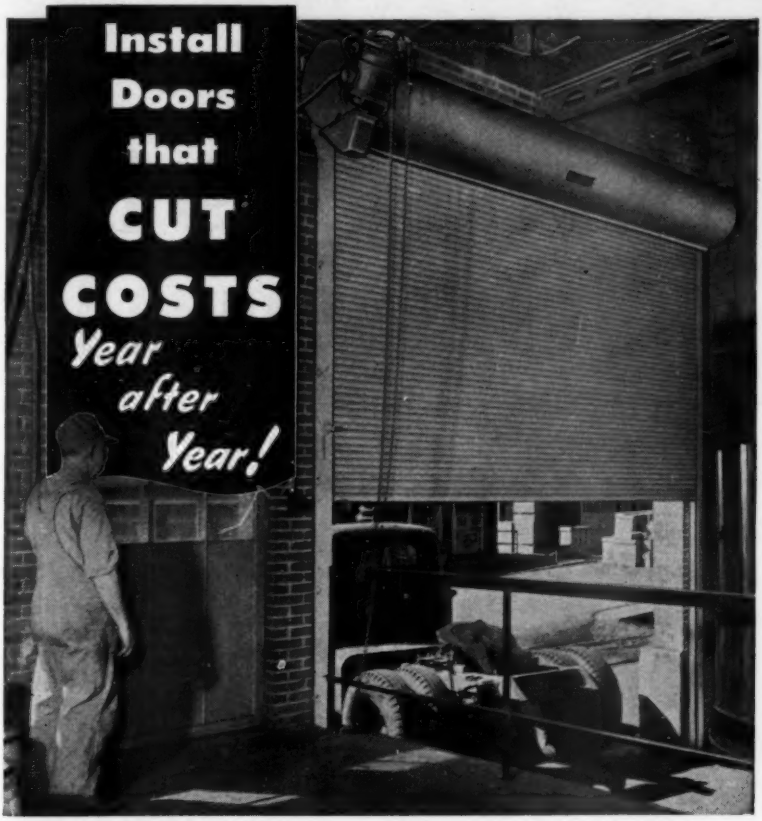

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Coiling upward action permits full use of all floor and wall space around openings, at all times. You can stack materials within an inch or two of the door, inside or outside—*or on both sides*—without impeding its action. This promotes more efficient handling of door traffic, deliveries, and shipments.

The smooth, easy action of Kinnear Rolling Doors saves time and labor—and no other type of door is so well adapted to the extra advantages of motor operation. With push-button controls at any desired number of convenient points, the door can be raised or lowered quickly at a second's notice. As a result, they are consistently closed more quickly after being opened, which brings important reductions in heating and air-conditioning costs.

When opened, the doors remain completely out of the way, safe from damage by winter vehicles. When closed, their rugged all-metal interlocking-slat curtain assures extra protection against fire, intrusion, wind and weather.

Kinnear Rolling Doors are built in any size, to meet the particular specifications of each opening, in old or new buildings. Motor or manual control. Write for full information.

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• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, financing, design, and construction.

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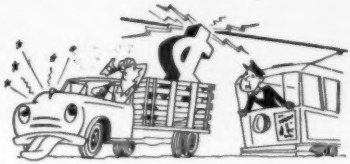

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